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POLITICAL AND MORAL ESSAYS

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BY

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PREFACE

Of these Essays, the first, entitled *A Dissertation on the Origin and Extent of Civil Authority*, was written for the Degree of Bachelor of Science in the University of Oxford, where the Statutes (tit. vi., sect. iv., § 1, ed. 1899) provide that "Science shall be taken to include Mathematics, Natural Science, Mental and Moral Science." The Dissertation is here published almost exactly as it was submitted to the Examiners. Of the remaining Essays, Numbers II., III., IV., V. have appeared in the pages of *The Month*, more or less in their present shape. A work by the same author, *Moral Philosophy, Ethics, and Natural Law* (Longmans, London), has found favour as a text-book in many Catholic schools. The author begs all students of that work to accept these Essays as supplying some of its deficiencies from an historical point of view, and improving upon several of its statements.

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Political and Moral Essays

ESSAY I

A DISSERTATION ON THE ORIGIN AND EXTENT OF CIVIL AUTHORITY

ἰσχυρόν τι πόλις ἐστὶ φύσει. — PLATO, *Politicus*, 302 A

PART I. — EXPOSITION

§ 1. I propose first to set forward my own views, afterwards to criticise the views of others. I shall treat of the 'origin' of civil authority theoretically, then historically: then I come to the 'extent' of civil authority. Having exposed my own, I proceed to the discussion of other opinions, in the course of which discussion my own thought, such as it is, will more fully appear.

§ 2. Civil authority is the supreme power of command in a perfect community of the temporal order. A perfect community is self-sufficient, *αὐτάρκης*. It is not referred to any other community as a part to the whole. It takes the law from no other: it is a community

with sovereignty inherent somewhere within itself. It supplies, or is capable of supplying, all its own earthly needs. Were the rest of mankind to perish, it could still subsist, and flourish in some sort. Such a perfect community is the State. The State may be either a city or a nation: a city with a small adjacent territory, as the cities of ancient Greece and of mediæval Italy, or a nation, as States commonly are now. Civil authority is supreme, final, ultimate, in a State as such.

§ 3. Self-sufficiency, or the management by a community of its own affairs in perfect independence of all neighbours, is a position attained by degrees, and these degrees shade into one another. The United States have been termed "a sovereign assembly of sovereign States." But the war of forty years ago evinced the conclusion that the Union alone is sovereign, not the individual States that compose it. The question whether the British Empire is one State or many is partly a question of words, partly of fact, involving the right of the colonies to secede at will, as to which right various opinions have been expressed by various schools of British statesmen. A colony is more like a State than a dependency; Canada, for instance, than British India.

§ 4. Commerce and rapid travelling and

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transmission of news have thrown all States into dependence on one another for the necessaries and luxuries of life. A State is no longer able or willing to isolate itself and live on its own resources, αὐτάρκης τε καὶ αὐτουργός, a condition which the theorists of old wished to realise in their model State,[1] though even they despaired of its perfect attainment. The ancient, ample, and exclusive empire of China is ceasing to be an exception to this rule. We are fed and clothed by the products of foreign States. Financial disorder in one State means confusion to many. Men need one another, and live by one another, all the world over, more than men ever did before. We are approaching "the parliament of man, the federation of the world," but approaching it as the solar system is approaching the constellation Hercules, — never to arrive there. To the end of all history, so far as we can foresee, there will exist States, several and independent, fairly well answering to the Aristotelian definition of a State as an 'independent community.'

§ 5. Instead of *self-sufficiency*, αὐτάρκεια, which characterises the State to Aristotle, modern minds substitute the note of *moral personality*. The State, they tell us, must be a

[1] See the opening of Plato's *Laws*, IV.

moral person. The change of view is not very great. Without sounding the depths of the mystery of personality, I observe that a person is (*a*) one, and not many; (*b*) distinct from and mainly independent of others; (*c*) self-conscious; (*d*) has a will of his own.[1] Unity, independence, self-consciousness, and volition are notes of personality, and attach to the State as a moral person. The greater number of the States that figure in history are in one way or another imperfect, either by immaturity or decay: consequently they do not possess these notes perfectly. Unity distinguishes a State from a federation, or an aggregate of powers: such an aggregate was the State under the feudal system (cf. p. 53, note). The most difficult problems in politics arise in determining the proper import of the maxim, which no one denies, that the State should be one. Aristotle (*Politics*, II. 1261 *a*) blames Plato's socialistic proposals as carrying this unity too far. Erastianism, I should say, is another excess of unity. The second note, the Aristotelian αὐτάρκεια, of itself alone always suffices to mark the State. The State is a Sovereign Body, or a body bearing sovereignty. The third note, self-consciousness in a State,

[1] I need hardly say that in laying this down I do not intend to specify the meaning of *hypostasis* in any theological sense.

may be identified with national spirit, patriotism, conscious enjoyment of a common power, and, from another side, conscious acquiescence in a common subjection: this consciousness is often defective, but never entirely fails. About the will of the State, otherwise called the General Will, or the Real Will, I shall have to treat more in detail hereafter. I shall also have to observe that there are in States, in large empires especially, inorganic elements, or masses of population that enter but slightly into the national will and consciousness.

§ 6. The first theory of the origin of civil authority is at once Aristotelian and theological, a theory, I may add, universally taught in the Catholic schools. It is a theory of Divine Right, not of monarchy alone, but of any and every lawful form of civil government, monarchy being but one lawful form out of many. The civil ruler is God's vicegerent. *There is no power but of God, and the powers that be are ordained of God* (Rom. xiii. 1). Soberly explained, this theory must commend itself to any man who believes in God at all. God is the *author and finisher* of nature no less than *of faith* (Heb. xii. 2). His laws are founded upon the exigencies of nature: what nature as a whole requires, God commands: what nature as a whole abhors as subversive of itself, God

forbids man to do. But, the argument goes on, human nature absolutely requires the institution of the State and the setting up of civil authority: society is of the essence of humanity, and society supposes government: human nature abhors anarchy. Therefore God forbids anarchy, as He forbids poisoning: but to forbid anarchy is to command and charter civil authority. In this argument two things are remarkable. First, that it supposes no positive intervention of God to found the State, no revelation from heaven, no theocracy. Christian divines maintain that God did positively descend from heaven to found the Church, that He prescribed to the Church a certain constitution, and that the Church to this day is a theocracy established for the salvation of souls. But, they observe, the State is not a theocracy: any particular form of government which the State may assume is always of human institution. It was far from the Apostle's mind to affirm that the powers that be are all theocracies. The second thing to remark is that the theological account of the origin of State authority presupposes the philosophical, is based upon it, and has no standing without it. We know that government is of God, because whatever is truly natural, or meets a true exigency of human nature, is of God. It remains then to

show on philosophical grounds that the State is a natural institution.

§ 7. The old name for a 'nature' was a 'kind.' 'Natural' is that which is proper to a kind. I suppose, what even J. S. Mill admits, that there are 'kinds' of things. Thus I am sitting at a table: the table is one kind of thing and I am another. For present purposes it does not matter how I come to be differentiated from the table: all I need say, and this I can very truly say, is that there is a difference of kind between us. Very different therefore are the things proper to us in our several kinds, or in other words, our natural requirements. The natural requirements of a table are few, and those of a negative character, not to be subjected to a crushing weight, not to be knocked about, not to be burnt. Left alone, the table will last for centuries. Man's requirements are incessant, to match the incessant changes occurring in his body and the continual movement of his mind. They are incessant, because, unlike such a thing as a table, the perfection of which is stationary, man goes through a progressive development and a subsequent decay both of mind and body. For the furtherance of this development, and the retarding of this decay, he needs continual refreshment from without, and continual activity on his own part, as well organic as voli-

tional activity. From these elementary facts we may gather a definition of what is natural to man. *That activity is natural to man which makes for human conservation and development.* Thus every healthy activity is a natural activity; and unhealthy activities, such as hard drinking and profuse gambling, are unnatural. But the definition needs eking out by a distinction, according as the bearing of any given activity upon the conservation and development of man is essential or accidental. An activity may further this development, yet so that the said development might still be sufficiently secured without that activity. Thus, healthful and suitable though it be for persons of both sexes to glide about on wheels, and for one sex at least to receive a university education, yet neither cycling nor the resorting to a university is simply indispensable to the possession of a sound body, or of a duly developed mind. On the other hand food is so necessary, and some education is so necessary. Eating, then, and education in general cleave more to nature, and are more strictly natural, than such particular exercises as riding, drawing, verse-writing, or music. In this stricter sense, *a natural activity is an activity which is simply indispensable for the conservation and development of man.* In the absence of such a natural

activity a man cannot be a man indeed, worthy of the name: he will only be some stunted figure of a man. In this sense speech is natural, but playing the flute would not come under the definition. In the same sense the construction of houses and the making of clothes is natural to the species, not to every individual of the species. We must all wear clothes, and some of us must be tailors.[1]

§ 8. We cast out as irrelevant to our present discussion the sense of 'ready-made,' or 'spontaneous,' which the word 'natural' bears to some minds, as though that alone were natural which comes of itself and is not acquired by human effort. Thus teeth are natural, and the fundamental activities of sensation, of which Aristotle says: "We have them and put them in practice: we did not come to have them by practice" (ἔχοντες ἐχρησάμεθα, οὐ χρησάμενοι ἔσχομεν, *Nic. Eth.* II. 1103 *a*, 31). That meaning of the word is too narrow. It would be most unnatural for man to remain having nothing, and doing nothing, but what his physical constitution supplied him with, and blindly led him to do. By appointment of nature, man

[1] Perhaps the best modern equivalent of the Aristotelian φύσις is 'development'; and φύσει πολιτικὸν ζῶον would be rendered, 'a living creature who reaches his term of development only in the πόλις.'

is the architect of his own fortune. Many things are natural to him which it takes an effort of his intelligence and will to compass.[1]

§ 9. Again, there are things 'natural in the advance of nature,' and of them we have made our definition; and things 'natural by defect of nature,' such as sickness and death: these latter are excluded from the definition and from all the argument yet to follow. Both are of God as Author of nature: but the former are 'of God commanding,' the latter, 'of God permitting,' where 'permission' is not to be taken in any moral sense, but denotes the mere absence of hinderance. We should say that civil authority is natural and of God; and plague and famine and death are also natural and of God, but not in the same way: civil authority is of God commanding, in view of the exigency of human nature for its due de-

[1] "Other beings are complete from their first existence, in that line of excellence which is allotted to them: but man begins with nothing realised (to use the word), and he has to make capital for himself by the exercise of those faculties which are his natural inheritance. Thus he gradually advances to the fulness of his original destiny. Nor is this progress mechanical, nor is it of necessity: it is committed to the personal efforts of each individual of the species: each of us has the prerogative of completing his inchoate and rudimental nature, and of developing his individual perfection out of the living elements with which his mind began to be. It is his gift to be the creator of his own sufficiency; and to be emphatically self-made." — CARDINAL NEWMAN, *Grammar of Assent*, p. 349.

velopment: plague and death are of nature failing, and God permitting it to fail. No wonder then that, while *he that resisteth the power resisteth the ordinance of God* (Rom. xiii. 2), the feeding of the hungry and the tending of the sick are works rewarded in heaven (Matt. xxiv. 34–36). Hunger and sickness, though permitted, are evils that we should endeavour to take away: but the endeavour to overturn the State is treason and deadly sin, inasmuch as the State is not simply permitted, but required and commanded.

§ 10. There is little room for originality in the proving of propositions like these, — that human nature, for its full and fair development, requires life in society, domestic and civil: that civil society is impossible without some civil authority to control it; and that, therefore, in the strict sense laid down above, civil authority is in the highest degree a natural institution: that treason, anarchy, and disruption of States is the subversion of human nature, in contradiction to the will and behest of its Creator. A proof of all this, a little less hackneyed than other proofs, may be derived from consideration of the pursuit of objective truth, upon which all human minds are engaged with more or less of diligence, fidelity, and success. Objective truth is the same for all

minds, variously apprehended, comprehended by none except by the Supreme Mind, with which it is ultimately identified in the ideal order of being.[1] Such truth is not of human thinking, but is the standard to which human thinking is conformed whenever it is right thinking. Thus there is an affinity of cognition between the minds of all men. All march, some in straighter, some in more tortuous paths, some nimbly, some with lame and faltering steps, towards the same goal of knowledge; and on the road that leads thither company is a necessity, if we are to travel far or fast or safely. It is our own thought that gets us along, not any one else's thought; but fellow-thinkers stimulate our thinking, give us things to think about, and check our errors. Commonly speaking, a man who sets to thinking all alone will either give up his task or become a visionary. If, therefore, thought and knowledge are natural to man, and indispensable to the due elaboration of his being, the common pursuit of knowledge is indispensable also. But knowledge can only be pursued in common

[1] By the 'ideal order' I mean the order of possibilities and necessities. The ideal order covers the actual and transcends it. It is the order of science and of art also, so far as science and art reach beyond actualities. As leading to the ideal, history is the ladder of poetry. But all this speculation is out of my subject.

on the firm and ample ground of civil society, and under the shelter of civil authority. Wherever that ground has been broken up, and that authority shaken, the course and flow of knowledge has been interrupted, as in the overturning of the Roman Empire by barbarian and by Mohammedan. Civil society is the *nidus* of thought, culture, science, art, invention; and is naturally requisite, as those pursuits are naturally requisite, for the development of man. But civil authority is the bond of civil society: that authority, therefore, is in the nature of things requisite and indispensable.

§ 11. Thus far of the theoretic and ethical ground of civil authority, or of the reason why such authority ought to be among men. There is further question of the actual and historical origin of this authority, how in point of fact it has come to be in the world, a highly complex enquiry. Had all mankind, from the first, formed one State with a continuous history, advancing in steady progress from less perfect to more perfect stages, then the rise and growth of authority in that State would have been εὐσύνοπτόν τι, like Aristotle's model city: it could have been grasped by the mind's eye as a whole, and pointed out and exhibited and rationally explained. Given a volume of liquid, the temperature of which always rises and

never falls, or always falls and never rises, never rises in one portion while it falls in another, never rises or falls faster in one portion than in another, the variations of temperature in that liquid are not difficult to register and explain. But with a vast volume of liquid, steaming hot here, frozen there, where areas of increasing heat coexist with areas of heat decreasing, where what has been increasing in heat suddenly begins to cool, and what has been losing heat turns to recovering it, the thermometrical record of that liquid, accurately made out, must be cumbersome and intricate. There have been countless States in the world; thousands are extinct: each has had its own history. Authority has rung its changes in those countless States in endless variety of ways. There are buried and extinct civilisations that once covered large portions of the earth.[1] And civilisation means the develop-

[1] So Plato, *Laws*, III. 676 B, C: —

"Must we not admit the rise of thousands upon thousands of States within this period, and a proportionate number of cases of the ruin of States? And must not these States, each on its own ground, have run through the whole cycle of revolutions, now waxing, now waning, now improving, now deteriorating?"

This and the following pages (676–681) show Plato to have been no stranger to the historical or dynamical conception of the State. He insists on what is perhaps too little noticed by evolutionary historians, that there have been losses as well as gains to civilisation. He supposes recurring catastrophes by deluges,

ment of the State. There have been ebbs and flows of civilisation. The State was less developed in England under Edward the Confessor than at Athens under Pericles fifteen centuries before. England was then an adolescent Nation: Athens, in the days of her glory, was a City State, ripe and mature.[1] The most I can do is to set forward some typical instance of the origin of government. I will gather certain facts of archæology into an historic parable, or *mythus*, false as history, but, I hope, not wholly inadmissible as an illustration of history.

§ 12. The land of Kasava was pleasant and productive. Like other lands, it existed before its population. The wild fruits ripened while yet there was no human hand to gather them. The animals ranged and fed, sometimes on one another, but no man had arisen to kill and eat. Kasava was not the cradle of the human race. When man did come, he came in a multitude:

pestilences, and other causes. He describes the survivors gradually recovering the arts of life, and reweaving the web of a political community.

[1] This dissertation might have been divided into two parts: *Civil Authority in Europe*, *Civil Authority in Asia*. The two accounts would have differed widely. The political mind of European and Asiatic has never been the same in history. Nevertheless the study of anthropology reveals a course of human development more uniform on the whole than could have been anticipated.

for, take him at his lowest, man is a gregarious animal. 'The individual' is quite a late conception in human history. There was little individuality in primitive times. There is little even now among the poor. The poor man has not a free hand: he is bound up with his class, even when he is an outcast and a tramp. Primitive man was no solitary wanderer. He was a member of a 'horde,' that is, of a community having no fixed abode, still keeping together and wandering over the earth in company, as gipsies do to this day. The company protected its members from the attacks of men of other companies and from wild beasts. The members rendered mutual services to one another, domestic, medical, religious. They lived by the chase and shared the quarry in common. The individual was tethered to the multitude by the strongest social ties. He had no thought of setting up for himself. Nor would he easily pass from the horde to which he belonged to any other community. He might be welcomed and eaten, if food were scarce. There were great men and small men in the horde of the Lapas: so these nomads were called, the first men to appear in the land of Kasava. There were Lapas who pushed, and got things arranged to their liking; and there were quiet Lapas who gave way; also indolent and incapable and

vicious Lapas. Thus, while all was supposed to be done by the consent of the grown men of the horde, the active and leading spirits really governed. They directed the migrations of the horde within its 'sphere of influence,' or tract of territory within which this mundane planetary body had its orbit, and was accustomed to revolve. There were other hordes besides with their several spheres of influence. The orbits of migration were fitful and irregular. The spheres of influence came to intersect one another. Horde clashed with horde, and fighting ensued. In one of these encounters there were so many Lapas slaughtered that it was resolved in common council of the survivors, because of the scarcity of game, — that was the pretext, — to seek other lands. They wandered for years, enduring great privations, and encountering hostile hordes on the way, who harassed them sorely. The whole horde might have fallen to pieces, and been dissolved like a comet breaking up into a shower of meteorites, had not a genius arisen among them in the person of a young man named Sava. Sava had an expedient for every emergency. He retrieved the desperate fortunes of the horde; and public gratitude and confidence placed the entire administration in his hands. Crowns were not yet invented, but Sava became

virtually king, and sat on a high turf-seat in the middle of the camp, the first monarch on the first throne, a war-leader and public benefactor raised to royalty by the grateful enthusiasm of his people.[1] Sava led the horde into the pleasant land, called from him Kasava. Sava, the first king of the Lapas, also built the first city in the land, Savapore. It stood at the confluence of two rivers, and was cunningly intersected with ditches and dikes. A thick hedge and stockade closed it in on the land side. The post was primarily military, not so much to keep friends in as to keep enemies out. The horde did not settle down and live there. They wandered, nomads as before, up and down the land of Kasava. But Savapore was their secure retreat, when they were hard pressed by enemies. The land by this time had attracted other hordes: but the Lapas, under Sava's inspiration, had resolved that they alone would possess Kasava, and this resolution they carried out in the main successfully. They expelled some invaders, and coalesced with others. To Savapore they brought home their booty, and in the river pastures round

[1] "The first founders, proving benefactors of the multitude, either by advancing the arts, or by success in war, or by gathering the people together, or by providing land, were made kings by the consent of their subjects, and bequeathed their power to their posterity." — ARISTOTLE, *Politics*, III. 1285 *b*.

Savapore they fed their flocks and herds.[1] Huts in time were built about the fort, on both sides of the two rivers: there the women and children were left, while the warriors went out to hunt and fight. To Savapore suitors and complainants came, as an alternative to fighting the contention out among themselves; and Sava and his successors sat in the gate, declaring dooms and customs, not without the advice of wise elders with long memories, for whom seats were placed around the king. It was found advisable to secure the country by a number of smaller forts, about which were also erected huts. But the jealous care of the kings prevented these subsidiary hamlets from ever emancipating themselves from the control of Savapore. Thus in Kasava there never was any call for a Theseus, to destroy the council-chambers of the smaller settlements (Thucydides, II. 15). The assemblies that met in those hamlets were never allowed to rise above the rank of parish councils. The government was centralised at Savapore. The nomad life of the Lapas, and of the hordes who amalgamated with them, has long since been exchanged for

[1] Doubtless, the domestication of animals took longer time for man to learn than the *mythus* allows for. The same may be said of any art of delving and diking, indeed of the whole transition from the savage to the barbarian.

pasturage and agriculture; and out of agriculture has grown commerce. Kasava is now a rich and powerful State, yet not altogether so interesting in its maturity as were its early beginnings under King Sava I.

§ 13. The *mythus* goes no farther for the present. It brings home this consideration, that it is a mistake to look for the earliest origin of the State in a group of independent householders, settled upon the land as stock farmers and agriculturists. Man is a nomad before he is an agriculturist; and even the nomad is already a member of a State. The *civitas* is prior to the *urbs*, the πόλις to the ἄστυ, not only in nature but even in time: ἄνδρες ἡ πόλις. There was a State before there were towns, before even there were homesteads. These nomads had a polity, but not a settlement (*μένουσαν πόλιν*); that was to come (*μέλλουσαν*, Heb. xiii. 14).[1] They were governed, not by human law, for human law is the outcome of mature civilisation, but by the custom of the horde, which left the individual anything but free to do as he pleased. A nomad horde is not an ideal political community, nor a Maori a model man, nor a sponge the best type of animal. Still, the perfection of the higher type

[1] But the Israelites were not a horde, they were not savages: they were a patriarchal society.

is no reason for refusing the generic name to the imperfect lower form, especially where that lower form holds in deposit the potency of the higher development.[1]

§ 14. The *mythus* makes no mention of the family, and no mention of religion, two great creative influences, it will be objected, away from which the State and civil authority could never have been engendered. First with regard to religion. I consider the influence of religion to have been a fostering rather than a creative influence, confirmatory rather than originative of politics and government, — at the same time a fostering influence of the highest efficiency, so efficient that, without it, what we know to have been the historical development of civil society could never have taken place. Religion surrounded the first chiefs of patriarchal society with a halo of divinity: it did not raise them to power. They were 'sons of heaven' because they were 'kings of men,' or masters of households. The priesthood followed upon royalty and upon paternity: it did not confer royalty, it did not make the *pater familias*. The first felt rational need of man is for social union.

[1] In writing this I stand with Seeley (*Introduction to Political Science*, Lecture II. pp. 32–36) rather than with Green, who declares, "A nomad horde could not be called a political society" (*Principles of Political Obligation*, p. 102).

When men came together, they worshipped together: they did not first come together in order to worship. Treason and rebellion are offences immediately against the social order, and thereby against God, the Saviour and Supreme Custodian of the State: they are not formally crimes against religion. The first community is political: the political tie, once formed, is strengthened by a religious sanction. The worship of departed ancestors hallowed the person of the *pater familias*, who represented them and in a manner continued their life.

§ 15. The origin of the State from the family has been traced by Aristotle (*Politics*, I. i–iii) and a crowd of meaner writers. This theory culminates in, though it does not necessarily involve, the 'patriarchal theory,' pushed to absurd lengths by Sir Robert Filmer in Locke's day. I am not without apprehension of difficulty in the treatment of this subject. My apprehensions are expressed in two proverbs, one Greek, κακὸν κακῷ ἰᾶσθαι, and one mediæval Latin, *obscurum per obscurius*. The darkness that besets the origin of the State is bad enough: there is a worse and deeper darkness enshrouding the first commencements of the family. From the Bible (Gen. ii. 24, quoted Matt. xix. 5) we have one flash of light as to the law of marriage before man was multiplied on the

earth. Then the darkness comes on, and we have to peer into it as best we may. In lack of other evidence, we may agree to judge of primitive communities of men by the savage communities which we find in Central Australia, in Queensland, in Borneo, among the Andamans in the Bay of Bengal, among African Bushmen, North American Indians, and elsewhere. Such a community are our Lapas, when they first appear in the *mythus*. Their food consists of things in their natural state, wild fruits, roots, and the flesh of such animals as they can kill. Their cookery is of the simplest. They are ignorant of baking, as of sowing and reaping and of all agriculture. They have no domestic animals except dogs. They have no use of metals. In such a society we do not expect to find the family quite as the institution exists in modern England. Not exactly families, yet not promiscuity. The hypothesis of primitive promiscuity remains an unproved hypothesis. The laws of physiology seem to forbid such license. It would have been a bar to the increase of the race.[1] Among our Lapas, — whom we take as a specimen of the savages that have been studied by modern travellers, — the intercourse of the sexes is subject to severe restraints. The horde is divided into two

[1] See Mr. Devas's *Studies of Family Life*, § 101.

classes, or phratries:[1] either class, or phratry, again is subdivided into totem groups. Between members of the same phratry there is no intermarriage, still less between members of the same totem group.[2] But, without any contract, every man in any given totem group is reckoned to be the husband of every woman of a corresponding age in some particular totem group of the other phratry. Actually, however, except on certain rare occasions, he will not cohabit with more than one or two women: these are assigned to him, not chosen by him, — a fair approach to monogamy after all. The children stay with the mother, and belong to the totem group to which she belongs. Such

[1] No real resemblance to the Attic φρατρίαι.

[2] In the language of the Algonquin Indians, *ote* means *group name*, *m* is the suffix meaning *his*, and *oth* is the article prefixed. Out of *oth-ote-m*, a certain trapper, named Long, caught the sound and coined the name 'totam,' or 'totem.' The group name is often the name of an animal, sometimes of a plant, sometimes of neither. A savage, finding himself named from an animal, cannot but have some regard for that animal: he may even tell you that he is descended from it: but the story of such descent arises out of the name, not the name from the story. The names of these totem groups have little or nothing to do with the religion of the savage who bear them. *Totem* in this connexion represents a matrimonial custom of exogamy, nothing more. The advantage of the custom is that it prevents outrages and quarrels: to attack any individual is to attack two groups instead of one. But the name 'totem' is further applied by anthropologists to a different object entirely. Most savages have some natural object, generally an animal, which they venerate, and which represents

are the rudimentary family relations of this rudimentary State. The rudimentary State is prior to the developed family. Nor was the first king a patriarch, or house-father, magnified. In the beginning, in such races as the Lapas there were no patriarchal houses. The first king, Sava I., was an *invicta bello dextera*, a leader skilful in war, an early prototype of Lord Roberts on the *veldt*. When the family, in some sort as we know it, became an institution, there appeared one sacred, patriarchal, royal family, which claimed descent from Sava I. He was the eponymous hero of that family, and later tradition looked upon him as the first house-father. In point of fact, this descent was much

to them in some way their ancestors. Out of this fact a whole literature has arisen, under the name of 'totemism.' A *totem* in this sense has nothing to do with marriage customs. Thus we read of *totems* among races like the Samoans, who have, to be sure, their sacred tutelary ancestral animals, but the exogamic institution of the totem group does not exist among them. Hence it appears that the name 'totem' was something of a mistake to begin with, and has been mistakenly applied to two perfectly distinct features of savage life, the one a feature of family relations, the other a feature of religion. Properly speaking, a totem is the crest and name of a sort of clan, and the object of the designation is to secure exogamy. The totem trees in the Pitt-Rivers Collection display the crests, or one might say, the heraldic bearings, of the illustrious barbarians before whose houses they stood. For any scientific value that this note may possess, I am indebted to Dr. Tylor, F.R.S., of the University Museum. (Cf. *Man, A Monthly Record of Anthropological Science*, January, 1902.)

eked out by adoption, a fertile process, of which more hereafter. Meanwhile the *mythus* resumes.[1]

§ 16. Not long after the entry of the Lapas into the land of Kasava, they began to change greatly for the better. They ceased to be savages. They learned to domesticate animals. They got them flocks and herds, and from a nomad horde of hunters they became a pastoral people. The cultivation of the soil followed upon the domestication of animals: agriculture was an adjunct to pasturage. But the law of diminishing returns soon asserted itself. The same plot of earth would not yield in the fifth year what it had yielded in the first. The primitive farmer thought there was some curse upon the spot, and went elsewhere. Agriculture itself was nomadic in its commencements.[2] The secrets of fallow, rotation of crops, and manuring were yet to be learned. The use of metals, even to the smelting of iron, followed in due course. This much facilitated the clearance of the primeval jungle, which at first had been cleared by fire. Thus the Lapas reached

[1] The *silvaticus solivagus* of Hobbes and Rousseau makes no figure in this veracious history, nor indeed in any history: he is a figment of the philosophic brain, ere that brain was disciplined by the historical method.

[2] *Arva per annos mutant et superest ager* (Tacitus, *Germania*, xxvi).

the 'patriarchal' stage of development. Their economy was no longer 'savage,' but 'barbaric,' such an economy as we read of in the *Germania* of Tacitus and in the Homeric poems, the economy of the early Romans and of the Kelts of Britain and Gaul. We may study it among the Arabs and the tribes of the Panjâb. The important feature is the development of the family under the patriarch, or house-father, in some such way as the following. The domestication of animals made a beginning of personal property, the animals attaching themselves to the individual who had domesticated them and understood them. He required the services of other men to tend his pets. Inasmuch as the animals were his, their natural increase was his also. *Res fructificat domino.* The stronger sex were more likely to become small proprietors in this way than the weaker. The ascendency of the male sex over the female gradually grew. The man began to think that, as he had dominion over his cattle and their increase, so he should be lord also of his wives and children, have certain women for his own exclusively, and consequently recognise and hold certain children for his.[1] Not to put too fine a point

[1] Not that I base the sentiment against polyandry on mere desire of ownership. In no age of the world can man love woman passionately, and not seek to possess her solely. Have not

upon the matter, the man insisted on being lord of his whole stock. Thus that fortress of fatherhood and marital right, the patriarchal household, was reared on a triple basis: —

(1) The absolute supremacy of the house-father over wives, children, domesticated animals, and the servants who tended them; all being, as the Roman lawyers phrased it, *in manu*.[1]

(2) Monogamy for females, one husband to one or several wives.

(3) Kinship traced through males, the house-father being taken for centre of reference.

§ 17. Among the Malays there are, or were thirty years ago, — for such interesting vestiges of barbarism are rapidly fading under the advance of a civilisation which is not always an obvious improvement, — long-drawn-out houses, or casernes, capable of holding from fifty to a hundred persons, built in sections, each section containing a monogamous family.[2] The whole caserne is under the matriarchal or maternal rule of some venerable grandmother, having for lieutenant her brother. The fathers

Othello and Desdemona been from the first? Or has the passion of human love grown only gradually with human intelligence?

[1] "Among barbarians, woman and slave are on the same level" (Aristotle, *Politics*, I. 1252 *b*).

[2] In what are called 'pueblo houses' the economy is the same, but the sections are built vertically one over the other.

of the several families have no authority, nor have they any home in the house: they come and go; they are members of another house. Like Jacob for Rachel, they must do several years of service, before the bride whom they seek is given them. Given in marriage, the girl still stays in the matriarchal house. This arrangement is in no way connected with any primitive promiscuity, for which some writers take it as evidence: it rests on the mere economic consideration of the value of the girl's labour, particularly in agriculture, to the house in which she was born. The family prefer taking the man in occasionally to parting with her. If, however, the husband is a person of importance, — which, among the Fuegians, who have similar customs, means that he has a canoe of his own, — and wishes to take his wife away with him, he pays bride-money (the Homeric ἕεδνα) not to the girl's parents, but to the matriarchal grandmother, or to the maternal uncle, in compensation for the loss of her services. Having so taken her, he founds now a *patriarchal* family of his own. The bride-money still survives in the 'gold and silver,' which in the Catholic marriage service the bridegroom presents to the bride. I am inclined to conjecture that the Amazons of old, and some representatives of the type in more modern

times (see Mr. E. J. Payne's *History of the New World called America*, Vol. II., Clarendon Press, 1899), were clusters of matriarchal families.

§ 18. According to the received view, the horde passed into the tribe, the tribe differentiated itself into clans, and the clan into families, whence finally has emerged the modern 'individual.' This view is to me difficult. The difficulty of the whole matter is to see how, in such a loosely organised community as the horde, the well-knit despotism of the patriarchal family came to be erected. I believe no perfect theory of the transaction has yet been found. We are left largely to guesswork and provisional hypotheses, pegs to hang facts on as they are discovered, and to abandon if they will not bear the strain. The horde, it is said, passed into the tribe, and the tribe differs from the horde by the strengthening of the tie of kinship. But how can the tie of kinship be strengthened otherwise than by the development of family relations? The family surely is the generating point both of clan and tribe. And is it not likely that from the family the clan would be formed before the tribe, the clan being the smaller union of the two, and the kinship of family with family in the clan more real and visible than in the tribe? I therefore

look upon this order of development as more probable: first the horde, then the family,—either matriarchal or patriarchal, still rudimentary and imperfect,—then the clan, and lastly the whole horde transformed, or, as I might say, 'segmented,' and making the tribe. The full strength of the patriarchal family I willingly allow to have been attained only as the organism of the tribe became complete. When I say, 'first the horde, then the family,' I mean, 'first in the order of progress from savagery to civilisation,' assuming such progress to be made as anthropologists lay down. Savages are savages by living in a horde, and by the imperfection of their matrimonial arrangements. Imperfect as they are when tried by a Christian standard, these arrangements are still highly complex, and severely enforced. Savage life in this respect is stricter by far than the lives of many civilised men and women.

§ 19. Thus the horde came to be honeycombed with families, segmented into families as into so many separate cells. This process of segmentation transformed the 'horde' into the 'tribe.' All tribesmen were kinsmen, whether by real descent from a common male ancestor, or by adoption into his family or clan, the body of natural or factitious descendants who bore

his name. Adoption — a conventionality to English ears — was a great reality in the patriarchal world, as every Roman lawyer knows, and every theologian should know. The accounts that we read of the rapid multiplication of certain families are not to be brushed aside as involving physiological impossibilities. Families multiply rapidly enough, when the head is powerful, and alien neighbours are glad to be adopted into his house and bear his name. The development of the tribe has been the development of the State. Aristotle, therefore, was right in making the family prior to the State in time, if by 'family' he meant the patriarchal family, and by 'State' the State in its maturity. What Aristotle failed distinctly to set down, though he was not an utter stranger to the notion, was that savagedom preceded barbarism, and that, previous to the elaboration of the patriarchal household, there existed some rude form of political society, now known as the 'horde,' with such imperfect marital relations as I have described. Such at least is the *thesis* of modern anthropologists, though no one supposes that the *thesis* is yet either adequately stated or fully demonstrated.[1]

[1] Men may fall in the scale of civilisation as well as rise in it, fall rapidly, and rise again slowly. We have to reckon with the possibility of retrogression as well as of progress.

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§ 20. Kindred, whether by blood or by adoption, was the cement of patriarchal society.[1] The man who could not name the family to which he belonged, at least as client or slave, had no place in the tribe: he had no social or political *status* whatever: he had no rights that any other man would champion, he could suffer no wrong that any power would avenge: if his own strong arm failed him, he was a lost man, unless indeed his very weakness and poverty rendered him contemptible and safe.[2]

§ 21. Reverting to the royal city of Savapore, now in the patriarchal stage of development, we are surprised at the procedure which there takes the place of our criminal law. An offence against person or property is not a crime against the State of Kasava: it is a crime against the family of the person offended. If

[1] On the decline of the family as a political factor in our civilisation, see Seeley, *Introduction to Political Science*, Lecture III. pp. 54–58.

[2] M. de Coulanges, *La Cité Antique*, p. 234, writes of patriarchal man in the family: Partout ailleurs il est sans dieu et en dehors de la vie morale. Là seulement il a sa dignité d'homme et ses devoirs. Il ne peut être homme que là. This eminent French scholar seems to me somewhat to exaggerate the strength of primogeniture. The cadet branches of the family, and the younger brothers of each generation, naturally the more numerous, often the more capable, would never have brooked such absolute predominance of each eldest son and his offspring as M. de Coulanges portrays. I find, however, some justification of M. de Coulanges in this passage of Plato (*Laws*, 740 B, C): "Let

the sufferer be a man of no family, 'a land-louper,' ἀτίμητος μετανάστης, there is no crime of which any one will take cognisance, unless the outcast show pluck and vigour enough to avenge himself. But slay the member of some household, and it is as though you had disturbed a wasps' nest: the whole brood will be out to chase you. *Dabunt malum Metelli, dabunt malum Metelli.* Nor will the mischief end with your death. Your nearest kinsman will wreak vengeance on your slayer, and so on either side, *pugnabunt ipsique nepotesque.* There is evidently some false principle at the root of this *regressus in infinitum*, on which Euripides moralises, as is his wont: —

> If a wife shall slay her husband, and then the son shall slay the mother, and that son's issue must pay in blood for the blood his father shed, how far on shall one travel to find

the holder of the allotment always leave some one only of his children as heir. . . . As for the other children, where more than one child is born, . . . let the authorities distribute the males to be adopted as sons by such of the citizens as are childless." Scipio Africanus Minor affords an instance of such adoption. M. de Coulanges insists alike on the strength of the patriarchal family and the strength of the patriarchal State. Are not these two powers in inverse proportion to one another? Does not Scottish history show the strength of the family to have been the weakness of the State? And was not the policy of Louis XI. the aggrandisement of the central authority at the expense of the great houses? M. de Coulanges takes no account of any stage of human progress prior in time to the patriarchal.

a term to miseries? Wisely did our sires lay down the law of old: they forbade him that had blood on his hands to appear in public, or to meet any one: their way was to purify him by banishment, but not to slay him in revenge: otherwise some one was bound always to be guilty of homicide, whoever had last stained his hands in blood. . . . As long as I have the power, I will stand by the law, and check this brutal tradition of murder, the everlasting bane of country and commonwealths. —*Orestes*, 504 ff.[1]

The saner portion of the community, the leaders of the tribe, and the men of religion, devised various checks upon this hereditary blood-feud. Among the Hebrews, *cities of refuge* were marked out, as we read in Num. xxxv. 9 ff. Among the Greeks, as the quotation shows, and many legends refer to the custom, it was enough if the murderer expatriated himself. Religious rites of purification were also instituted (Æschylus, *Eumenides*, 237–239, 445–452). But the great remedy was the institution of *bote*, or compensation to be paid to

[1] The tragic monarch did well in exerting his power to "quell this brutal and murderous" practice of blood-feud. Yet blood-feud had its office in the march of civilisation. There is perhaps a stage in which this is the only form of justice available against crimes of violence. "The grand principle of Kaffir law," says Sir George Gray, — and we must remember that Kaffir law was once European law, — "is collective responsibility: do away with this, and the Kaffirs will speedily become unmanageable." Considerations of this sort are valuable contributions to the solution of the vexed question of Old Testament morality. See the Appendix to the third edition of my *Ethics and Natural Law*.

the relatives of the slain, of which by degrees a regular tariff was drawn up, according to the dignity of the man killed. It rested at first with the choice of the kinsfolk, whether they would take *bote* or have blood. Some heinous murders were *boteless*, and must be expiated in blood. It became the object of the State more and more to press the acceptance of *bote*. The Christian precept of forgiveness of enemies, a vital precept in a barbaric age, also entered in to prevent slaughter. But no sooner was the State able to insist upon *bote* being taken, than a further function devolved upon it, the function of criminal trial, and from that, of civil trial also. It was necessary to determine whether the offence was *boteless* or not. The offender brought up his kinsmen no longer now to fight for him, but as witnesses of character, or *compurgators*. If the offence was *boteless*, the State might hand the criminal over to his enemies to slay: but in time the State preferred to keep the slaying in its own hands.[1] The public executioner entered upon his office, and the State discovered that it *bore not the sword in vain* (Rom. xiii. 4). There was a difficulty, not soon overcome, in getting the contending parties to come into court. It

[1] *Boteless* offences were the original type of what are now called *crimes*, matter of criminal as distinguished from civil pro-

long remained open to the accused to decline trial, and settle the matter by fighting his accusers or their champions. Provision for this 'wager of battle' was not struck off the English statute-book till the beginning of the nineteenth century. Every trial, it has been well observed, whether criminal or civil, is "a fight arrested." What we call 'a criminal offence,' matter of *jus publicum*, is taken by the State for an offence against itself: of old it was an offence against the family of the sufferer. What we call 'civil procedure,' matter of *jus privatum*, is still regarded by the State as a private contention, of which, however, the State will take cognisance, if called upon, and will enforce its decision.

§ 22. We have travelled a long way from the patriarchal city of Savapore. Returning thither for the last time, we discover a second matter of surprise, quite a startling paradox; it is this: here is a State without any legislative power.

cedure. Plato (*Laws* vi. 767 B) marks the distinction thus, "For other cases let there be two tribunals: the one when any private individual accuses another private individual of doing him wrong, and so prosecutes him and demands judgment; the other, when the commonwealth considers itself aggrieved by any of the citizens, considers the public interest threatened, and wishes to support it." To have risen to the conception of the commonwealth being wronged (τὸ δημόσιον ἀδικεῖσθαι) argues a development of self-consciousness and of civil personality in the State (see § 5).

There is absolutely no power in Savapore, or in the whole land of Kasava, that can make a new law.[1] For laws there are customs, registered in the memories of a Council of Elders. These Conscript Fathers meet, not to legislate, but to remember, though no doubt their memories prove rather convenient for their own purposes. But the theories of Royal Ordinances and of the Omnipotence of Parliament have yet to be invented. The answer of Pope Stephen in the third century, on the validity of baptism conferred by heretics, *Nihil innovetur, nisi quod traditum est*, was quite a patriarchal utterance. There are considerable remains of patriarchal civilisation still in existence in India and elsewhere. A mistake of the English government,

[1] Si nous entendons par legislateur un homme qui crée un code par la puissance de son génie et qui l'impose aux autres hommes, ce legislateur n'existait jamais chez les anciens. La loi antique ne sortait pas non plus des votes du peuple. La pensée que le nombre des suffrages pouvait faire une loi n'apparait que fort tard dans les cités (*La Cité Antique*, p. 220). Plato somehow divined this truth, that there was a civil state anterior to legislation. "We may conclude," he says, "that those ages had no need of lawgivers, nor was there any legislation at that time. The art of writing was not yet in vogue at the period we are considering: the people lived in obedience to customs and traditional observances" (*Laws*, III. 680 A). He thinks that when small clans, having different customs, united together, legislation then first became necessary, to decide which customs should prevail in the newly formed whole (*ib.* 681 A–C).

For the general concept of Law see my *Ethics and Natural Law*, Pt. I. ch vii. pp. 126–132.

now happily recognised and being avoided, was to endeavour by legislation to supplant customs which were as fixed and firm to the inhabitants as the law of gravitation to the astronomer. Such legislation was doomed to failure. Time-honoured custom overlaid new-fangled law.[1]

I hasten to add that, at the moment at which I write, Kasava has passed through the patriarchal stage to the military and commercial stage of civilisation; that "the substitution of an artificial for a natural basis of subsistence"[2] is complete; and that Savapore under King Sava XCII. is as modern a city as London or New York. We take leave of His Majesty and his Lapas. καὶ τὸ μὲν δὴ τοῦ μύθου τέλος ἐχέτω (Plato, *Politicus*, 274 D).

§ 23. Civil authority in its maturity is at once legislative, judicial, and executive. In the rudimentary State, executive functions are not less undeveloped than legislative and judicial.

[1] There is, however, one striking instance of abolition of custom even in the age when custom was supreme, in the half-patriarchal, half-military society of the sixth and seventh centuries of our era. I mean the conversion of the Teutonic races to Christianity. How many reputed 'good customs' must have been undone when Edwin of Northumbria was baptised, and high-priest Coiffi flung his spear at the idols in the temple of Godmundingham!

[2] *History of the New World called America*, by E. J. Payne, Vol. I. p. 276.

We may divide executive functions into those which are *executive* proper, being concerned with the execution of justice as decreed in courts civil and criminal, — such functions are an appanage to the judicial; *military* and *diplomatic* functions, pointing to foreign relations of war and peace; and lastly, functions which we may call *administrative*. These last are social and economic rather than political. They deal with such branches of the public economy as the State takes up and makes matter of legislation — education and the public health are instances: administrative functions have to do with the carrying out of such legislation. Excess of administration makes bureaucracy. The administrative staff behave in some countries as the servants, in others as the masters, of the people. In England they are jealously watched by the legislature, by the judicature, by public opinion and the press. We detest a 'jack in office.' The delinquencies of an official person are punished as severely as those of a pauper, or should be. This is a great secret of real liberty. Without this vigilance, constitutions and plebiscites may cover a brood of petty despots. The Crown is the chief of the executive, in the widest sense of the term; and all the doings of the executive amongst us run in His Majesty's name. Originally all

administration was for military and fiscal purposes, money being the sinews of war. A primitive government had no more care of the public health than the War Office has of it now. Highways and bridges soon became matter of administration, because they were of importance for the movement of soldiers. Ancient commerce followed the military routes. Coinage had to be attended to, because the military tribute might be paid in coin. In England at one time there were thirty or forty different standards of weights and measures: unity had to be enforced, otherwise the government could not be sure of its dues, many military aids being paid in kind. The king, being a great landowner, regulated his royal estates: these regulations were copied by neighbours, passed into customs, and finally were embodied in law. In times of dire calamity, such as the dearth of labourers after the Black Death, — compare our modern experience of famines in India, where from conquerors we have been turned into purveyors, — people fly to government as to the strongest, swiftest, and most present power to help them. The hand of government, once called in, is never wholly taken away again. The government learns to administer, and the people to expect administration. Thus much of the gradual growth of

that branch of civil authority, in our days so fertile of results, administration.

§ 24. To prepare the way for defining the extent of civil authority, I must be allowed some further theoretical enquiry into its origin. The origin of civil authority from nature and from God I have already considered. I have now to consider its origin as derived from man, I mean, from the consent of the governed. First, I observe, there can be no asking of the consent of mankind to decide whether they will have any government at all. Willy nilly, there must be civil government, or all human development is lost. The question is, who shall govern and under what forms? The question is, whether the consent of the governed is necessary to the validity of the polity under which they live, and to the validity of the appointment of the living rulers who administer that polity. Further to narrow the question, I do not enquire about the consent of the people's ancestors in bygone days, but about the consent of the living generation of people. Does civil authority, for its form and *personnel*, depend upon the continued approval of the people governed? And that again may be a question of a bare actual consent, or of a hearty consent, approval, and good will. In point of actual consent, people cannot be gov-

erned unless they choose to obey. A man may obey because he has a pistol at each ear and a bayonet behind his back; but that is not civil obedience, nor is it habitual obedience, it is obedience under an emergency that passes away. No government can be erected on a basis of mere coercion. You cannot, it is said, sit on bayonets. There must be some willingness of the people to submit, if the State is to be a State at all. It may be an unwilling willingness, an unwillingness that chooses obedience as the less of two evils; but obedience it is and consent under the circumstances. Our actions are done and our practical elections made, not in the general but in the singular, under the circumstances that surround us at the time.[1] Velleity is in the general, but volition in the singular. The actual consent of the governed, then, is an essential condition of the exercise of civil authority.[2]

§ 25. The full consent and good will of the people is ordinarily requisite for the valid setting up of a new government over them: such

[1] "An action is consummated and complete at the time in which it is done: therefore it must be called voluntary or involuntary accordingly as it is precisely at that time." Aristotle, *Nic. Eth.*, III. 1110 *a*.

[2] Force cannot dispense with persuasion, or the modelling of public opinion, where subjects are educated and refined; nor even with such subjects can persuasion go wholly unsupported

consent is not requisite to validate a government already established. I use the word 'ordinarily' in the first clause of the proposition, because of the extraordinary, though by no means uncommon, case of subjugation by war. When a people go to war unjustly and are overcome in the same, they may at times be made to pay for their injustice by the loss of their political independence. Otherwise one State must not absorb and annex a neighbouring State against its will, nor one section in a State subjugate the rest of the population without their free consent. The thing is not less wrong for having often been done in history. But, it is asked, may not the consent of the people be dispensed with, or taken for granted, when they need governing, and are to be governed to their own advantage and amelioration of their lot, not of course without some reciprocal profit to the strong hand that subjects them? An affirmative answer would justify many a *coup d'état* and many a conquest. Strongly in favour of affirmation is the Aristotelian docrine of φύσει δοῦλοι. Aristotle advocates the use of violence, πρὸς τὰ θηρία καὶ

by force: at the foundation of all civil obedience lies the consideration that, in the last resort, 'the soldiers will fire.' Cf. Plato's fashion of prefixing preludes to his laws (*Laws*, iv. 720, 722, 723), — persuasion preambulatory to legislation, and, I may add, compulsion consequent.

τῶν ἀνθρώπων ὅσοι πεφυκότες ἄρχεσθαι μὴ θέλουσιν (*Politics*, I. 1256 *b*), even to the hunting of them for slaves, much more to the reduction of them to political vassalage. He quotes with approval the line, —

> Justice subjects barbarian to Greek,

i.e. uncivilised man to civilised. The stoutest Aristotelian, however, will admit that this principle must be carefully limited, or we shall have universal war. What but the sword can ultimately decide which is the superior race?

§ 26. I have said the continued good will of the governed is not indispensable to the validation of a government already established. To shrink from this somewhat unpopular proposition is to license mutiny, rebellion, treason, revolution, anarchy. Speaking generally, an established government is justified in using force to maintain itself. Even against the whole people? it will be asked. If the whole people means everybody in the State, the question is superfluous. If it means some strong section in the State, the American Union answered the question in the affirmative in the war of 1862, and the British Government in the suppression of the Indian Mutiny in 1858. But is the government justified in maintaining itself against the majority of the entire popu-

lation? First, be it observed, the constitution of the country may be based on an acknowledgement of the ultimate supremacy of the will of the majority, and there may be legal provision for the expression of that will. In such a country the government is bound to bow to the constitutional demand of the majority constitutionally expressed. Unconstitutional expressions, such as riotous public meetings, may be disregarded. Apart from positive facts of constitutional history, the continued free consent of the majority is not the one source of valid civil authority. Authority does not pass into usurpation as soon as ever the affections of the people are alienated from their rulers; nor may a people always overturn any government which as a people they dislike. These are impracticable maxims. They do well on paper, but no government can or will tolerate the attempt to put them in execution. The sanctity, natural and divine, attaching to civil authority, attaches to the civil authority here and now constituted: otherwise it would be an abstract and vain sanctity, hanging idle in the air, remote from practice, and meaning nothing. By this it is not pretended that governments should neglect the trend of popular opinion. Quite the reverse. Such fatuity leads ever to fatal issues. A government has

higher duties than the maintenance of its rights over the governed. Government exists for the good of the governed. In view of that good, authority must not wring out of the subject every obedience that stern justice can impose. Government will often do well to abate some of its rights, to admit the people to a greater share of power, to grant some sort of *magna charta* or 'constitution.' The more share the people have in the government the better, so long as they are a capable people. In that proviso the difficulty lies.[1]

§ 27. Government may be severe, unreasonably severe, without exceeding its powers. Subjects may remonstrate in that case, but in the last resort they ought to obey. When government grows oppressive in excess of its constitutional powers, we are to consider whether these unconstitutional acts are isolated and exceptional, or whether they are so frequent as to amount to a permanent aggression upon the liberties and rights of the people. A government whose aggression is permanent, and whose excesses of power are flagrant and continual, puts itself in the position of a usurper and be-

[1] The ideal of government I think would be, a narrow apex of decisive authority (κυρία ἀρχή), resting upon a broad basis of discussion (λόγοι), the limits to discussion being the two needs of expedition and of secrecy.

comes equated to anarchy. Still, attempts to subvert even a usurping government are wrong, when ill-concerted and unlikely to succeed. Such ineffectual risings only add fuel to the fire.[1] As they do not prosper, they will be called treason, and not fall far short of deserving the name. Much better than recourse to such dubious remedies is it to have some constitutional organ provided for changing the government, whenever that begins to degenerate into a tyranny. A long political development has provided us in England with such an organ, — "a government-making organ" Sir John Seeley calls it,[2] namely, the modern House of Commons. The real government in England to-day is the Cabinet, which we habitually speak of as 'the government.' The Cabinet depends for its collective existence on the House, and the House again on the constituencies. Thus, as the *Times* of April 7, 1880, observed, "We save ourselves the more virulent and destructive diseases of revolution, sedition, and civil war, by submitting to the milder type of a change of ministry." A twentieth century Roboam, were such a prince to arise amongst us, would not rend the king-

[1] See, in my *Ethics and Natural Law*, the section on "Resistance to Civil Power," pp. 338–343.

[2] *Introduction to Political Science*, pp. 193–227.

dom in pieces; another James II. would not be dethroned; but the Cabinet of Evil Counsel would fall by a vote of 'want of confidence,' and His Majesty would be constrained to lend the lustre of his royal name to a ministry of moderate and popular men.

§ 28. There is no governing on sufferance. There can be no constitutional right of chronic revolution. Every government must hold its head some little height at least above the daily good pleasure of the governed. We cannot base civil authority simply and solely upon the consent of the governed, nor again upon need to be governed meeting with capacity for governing. Civil authority, historically considered, arises in many various ways. Once established, and dwelling within the compass of its proper limits, it must in all conscience be obeyed; for human nature is political and abhors anarchy.

§ 29. From the origin of civil authority I pass to the more difficult part of my subject, the extent of that authority. For completeness' sake let me point out one limitation of civil authority by the limits of the State to which it belongs. The limits of a State may be either personal or territorial: that is, the State may comprise such and such persons, wherever they live, or such and such a portion

of the globe, with whatsoever persons live upon it. The consent of civilised times has tended to prefer the territorial limitation of States, not however without considerable regard to personal limitation, as processes of naturalisation and extradition treaties show.[1] No State can be denied such authority over travellers and resident aliens as is necessary to the maintenance of public tranquillity. An invasion in war is a partial and temporary annexation.

§ 30. By 'authority' in this dissertation I mean authority that is *practically available without injustice.* I do not mean the authority which one claims to have but cannot exercise, however reasonable and just the claim. Nor do I mean authority, however vigorously exercised, if the exercise be unjust. On this definition Charles II. had no authority in England in the year 1657, nor at the same time, from Charles's point of view, had Oliver Cromwell any authority there either.[2] The two limits of authority, then, are ineffectiveness and injustice. I will point out some cases of limi-

[1] 'Once a British subject, always a British subject,' is the saying. Civil authority extends over all who owe the State military allegiance. Military allegiance is the bond of the modern State, as kinship was of the patriarchal State. Yet still the sense of a common blood and ancestry, or as we say 'racial feeling,' binds a nation together and makes up one half of patriotism.

[2] Except as a caretaker, in which sense Charles might have construed the title 'Protector.'

tation by ineffectiveness. They are, immaturity of the State, excessive distribution, personal weakness, fundamental law.

§ 31. What has been already written on the historical origin of the State sufficiently exhibits the weakness of civil authority in the early stages of its development. There is much administration in the infant State, as there is also much activity in a child, but the administration is not orderly, scientific, regular, and centralised. For law, there are dooms and customs; for judgment, blood-feud and wager of battle; for policy, impulse; for kingship, sometimes tyranny. This leads me to ask whether even the modern State is yet full grown. The active exercise of civil authority seems to be everywhere on the increase. Can it be that, as we speak of the polities of the twelfth century as immature, succeeding ages will tell of the unripe and imperfect civil organisation of the nineteenth century? In particular, how much of the ownership of land and capital, what control of commerce and of education, — education, I say, of boys and youths and men, — will the State one day take into its own hands? We had better not make ourselves ridiculous to posterity by prophesying. I am not inspired to foretell the future, however I may have an opinion as to expedi-

ency in the immediate present. *Festina lente.* Let the State go slow on these paths, and beware of doctrinaires.[1]

§ 32. A 'polity' may be defined 'the distribution of civil authority.' Where authority is all concentrated in a single person, we have 'one man government,' or absolute monarchy. Sheer democracy would be the distribution of authority in equal shares to all adult males, or even to all adults. One special mode of distribution we see in 'local government.' The functions of local government are all derived from the imperial government, and controlled by it, and could on occasion be reabsorbed by it. Boroughs get their powers by Act of Parliament, and hold them at the pleasure of Parliament. The central government is always able to centralise more, if it pleases. Local government is, in fact, a department of

[1] To the collectivist of the Fabian Society type, the State is still immature. The saying of Seneca, *imperio Cæsar omnia possidet, singuli dominio*, to the Fabian marks a distinction that shall pass away. In the final ripeness of States he expects ownership of capital and civil authority to coincide. From such coincidence strange consequences might ensue to the family. So long as the family holds its present position, the State can never gather into its hands the entire control of education, for this most natural reason, that none has such a presiding influence over the making of a child into a man as its father and mother, if they know how and choose to exercise it; an influence which the State can neither abrogate nor command, unless, as I say, the family shall be made other than as we know it.

imperial government, an overflow and particular application of sovereignty, not a distinct power.[1] At the same time, once put in commission, authority is not so easily resumed, in a parliamentary country especially. There is a limit, beyond which the exercise of civil authority will be hampered and weakened by

[1] This holds where the unity of the State is established. The local authorities of feudal or semi-feudal kingdoms made up together not so much a State as a federation. Dr. Gierke, *Political Theories of the Middle Age*, p. 84, speaks of "the age of feudalism, and the age in which the community appeared as a legal system of estates." Moral and quasi-personal unity marks a higher stage of political organisation. There was less of unity and a lower organisation in the mediæval State than in the Greek City State. Politics had, in some respects, gone back from the point gained in classical times. But the Greek City State was full-blown, and had no future before it: while the large and cumbrous masses of mediævalism had in them the potency of the modern world, a world at once better and worse than the mediæval, but anyhow more vast, more complex, and more marvellous. The mediæval State was a cluster of corporations: the modern State tends to become one society. This is a reversion to the Hellenic type. Another reversion is the wearing away of the distinction between the State and the people, or, what is much the same thing, between the sovereign and the people. This marks the advent of democracy. I may put it in this way, that the term 'people' is changing so as to connote less and less of subjection and more and more of sovereignty. The people are ceasing to be 'subjects,' except when taken distributively. Similar was the connotation of ὁ δῆμος at Athens, and of *populus* at Rome. I speak of facts and received theories, leaving aside desirabilities and all that ought to be. Yet, whatever theory be received, Nature will ever assert her rule in practice, that they who actually direct and administer are the capable or the audacious few.

any further step in the way of democracy, or any further development of local government. This I call 'limitation by excess of distribution.'

§ 33. A wide and important distinction separates authority, or prerogative, from capacity. By capacity I understand here aptitude for bearing authority with dignity and credit, and wielding it to effect. All have remarked the well-earned increment of the credit and influence of the Crown in the late reign. Queen Victoria was endowed with eminent capacity of authority. A government is lost when it becomes discredited. A discredited parliament would be soon dissolved: a discredited ministry falls: but unhappiest of all mortals is the discredited autocrat. It is possible to be in office and not in power. Mark two men in exactly the same position, armed in theory with the same prerogative, how much the one man will do, how little the other does or can do. This is how absolute monarchy, — monarchy, I mean, where the single person has a free hand, and all law is the mere breath of his mouth, — passes into a practical absurdity. It takes a Cæsar to wield such plenitude of power. If the autocrat is Cæsar in name only, either the government goes on by routine, or it falls into the hands of favourites,

or the chiefs of departments go their several ways independently. Limitation of capacity is a great limitation to all authority borne by man.

§ 34. In the sovereign assembly at Athens, any proposer of changes on certain reserved matters laid himself open to an indictment, known as the *γραφὴ παρανόμων*. In another Greek State it is said that any such champion of repeal came forward with a halter round his neck: the halter was tightened if the motion was lost. In modern States generally, although not in England, there are 'fundamental laws,' or a written 'constitution,' with which the legislature may not meddle. The consent, however, of some definite persons, — at any rate, of the whole people, — can abolish any fundamental law, and set aside any constitution, as on one dark day of disaster the Athenian assembly overruled the *γραφὴ παρανόμων*. But an effort is required to such effect, and a motive strong enough to rouse the whole people. Failing such excitement, civil authority is tied up, held in suspense, impeded, and, therefore, according to our definition, diminished, by fundamental laws. Hence Sidgwick speaks of a 'rigid,' as opposed to a 'flexible,' constitution. Rigidity has its advantages, but it may lessen efficiency.

§ 35. The activity of government is at its maximum in the worst times, unless indeed it be part of the evil of such times that the government is unstrung and paralysed. When 'the Gaul is at the gates,' the hand of authority is untied and extended to its utmost reach. Short of deeds wanton and useless, it is difficult to assign limits then to the power of the State over life and property. I do not say there are not limits, but they are hard to fix. The execution of Catiline forms a test case here. Was it not just, if necessary, though against the ordinary forms of law? I offer no opinion. *Necessitas facit fere omnia Cæsaris.* Happy the government whose hand is seldom thus strengthened by emergency. A wise ruler has no passion for governing. With the insane, the consciousness of power leads necessarily to the exercise of it. A strong wise man holds the greater part of his power and authority habitually in reserve. The spectacle of quiet times, slack administration, and spontaneous promotion of the public good by voluntary associations forms a pleasing contemplation. Something of it was realised in those sleepy old ecclesiastical Electorates on the Rhine, which gave rise to the proverb, "It is good living under the cross."

§ 36. The special province of civil author-

ity is not religion, not temperance, not chastity, not fortitude, not benevolence, but justice, understanding by 'justice' the 'general justice' described in the *Nicomachean Ethics*, V. pp. 1129, 1130 *a*, that is to say, social virtue. Acts of other virtues the State can only command inasmuch as they bear upon society, and therefore in some manner come under justice. Thus the State enjoins temperance, that a man be not drunk and disorderly in public; fortitude in a soldier, to fight for his country; chastity, to the exclusion of rape, bigamy, and, to some extent, of adultery and unnatural crime. Therefore it is said that the State commands acts of all virtues, but not all acts of virtue, not even all obligatory acts, if we speak of moral obligation. Nor does the State ever enjoin the proper motives of each virtue: it is fain to be content with the external act, whatever the motive.[1]

[1] This is the meaning of the saying, *de internis non judicat prætor*. The coercive jurisdiction of the State does not extend to motives, except in so far as motives are embodied in overt acts. The State cannot enforce loyalty of heart: it enforces loyal conduct and, to some extent, loyal language. Loyalty of heart is a duty all the same. Treason would never be a sin in external act, if treasonable sentiments and desires could not possibly be a sin. But the enforcement of inward loyalty must be left to conscience and to the Searcher of hearts. No statesman, however, will neglect to employ the moral means of speech and persuasion for the kindling and propagation of the sentiment of duty towards the State. Cabinet ministers go about making speeches. Even

Justice being essentially *ad alterum*, 'in relation to some other person,' a man's private life and behaviour, as bearing directly and immediately on himself alone, is not matter of justice, and is removed from State control. The mutual relations of husband and wife, of parent and child, are not absolute matter of justice, because the parties are not entirely other and other: there is not a thoroughgoing and complete moral distinction between them: the child is *res parentis*, and husband and wife are *one flesh*. That is to say, the domestic order is not entirely merged in the civil order. Inasmuch, however, as husband and wife, parent and child, are distinct human beings, a certain measure of strict justice obtains between them, which comes under the cognisance of the civil courts, and those courts have the right of interference *ab abusu*.

§ 37. Some rights are the creation of the State, as the privileges of the Bank of England. Other rights are not created by the State, but are safeguarded and determined in detail by it. These I call 'natural rights.' I may sufficiently describe them by saying that they are the same in all civilisations, and that it is everywhere the mark of a tyrannical gov-

a military dictator publishes manifestoes to the army, the army under such a constitution being the people.

ernment not to respect them.[1] Such are the rights to life, to limb, to personal liberty, to the acquisition of property and the possession of it when acquired, the right to honour and reputation, and to the exercise of religion. Except the last named, the State may withdraw any of these rights in punishment.[2]

§ 38. It is the function of civil authority so to co-ordinate these rights as that they may work harmoniously in an organic whole, one man's natural right not marring another's. A natural right often needs 'determining,' that is to say, its precise extent needs to be fixed by civil law. Hereditary right furnishes a good instance. Nature requires, all civilised nations

[1] "There is a system of rights and obligations which *should* be maintained by law, whether it is so or not, and which may properly be called natural." — GREEN, *Works*, Vol. II. p. 339. They might also be called 'rational.' In the language of Plato they are *φύσει ἢ φύσεως οὐχ ἧττον, εἴπερ νοῦ γέ ἐστι γεννήματα κατὰ λόγον ὀρθόν* (*Laws*, X. 890 D).

[2] I should call the principle of *habeas corpus* a natural right which the State cannot withdraw. *Lettres de cachet*, consigning a man on suspicion to the Bastille, and keeping him there for months without trial, were extravagances beyond the limit of civil authority. There was abundant precedent for them, it is true; but I quote the example to show that neither the historical method, which yields facts, nor the legal method of precedent and decree, can work in isolation from the ethical method, which attends to the moral law. Civil authority is ever limited by morality, that is by *ὀρθὸς λόγος*, right reason reasonably applied. The State is no more licensed than the individual to behave irrationally.

have acquiesced in, some measure of transmission of property from parent to child. This vague generality is rendered express and particular and practically operative by legal provisions. The babblings of nature become articulate speech in the mouth of the civil legislator and judge. No community could hold together on the moral law of nature alone, *e.g.* on the code of the ten commandments. Natural law demands the further creation of civil law, that network of conventionalities which the State elaborates, partly out of custom, partly by enactment, — the cocoon within which the State is contained.

§ 39. The State in the maturity of its strength not only legislates, it also arbitrates between litigants. Arbitration is a permanent necessity. No code can be so distinct and clear as to settle automatically every dispute. Private arbitration goes some way, but it cannot bring the party appealed against into court, — the State itself at first had much difficulty in doing that: and private arbitration cannot enforce its award, — the State alone can. The early State was reluctant to undertake this arbitration: it was necessary to recur to some legal fiction of the king being a party to the quarrel. There remained the old-fashioned alternative of private war, a trial, not of justice,

but of strength. Every good government does its best to supersede private war. That was the aim of our Plantagenet and Tudor kings, in the days when the nobility were armed potentates. They did not fight much with one another, but at times a good deal about the king, for or against him. The nobility have been pacified, but not the mercantile classes; and private war survives amongst us in the shape of strikes and lockouts.

§ 40. The State guards its own rights and the rights of its subjects by the punishment of offenders. It would be incorrect to describe punishment as the self-defence of the State against evil-doers. It were doing too much honour to the criminal classes to allow them the style and title of belligerents. War is between equals, self-defence is against equals: but punishment is an act of jurisdiction exercised upon subjects. The Sword of State is borne before the king, denoting the right, inherent in every State, called 'the right of the sword,' the right of inflicting capital punishment. Every sovereign authority has this power of life and death: no other than sovereign authority has it.[1] The State may tie its

[1] παρ' γὰρ ἐμοὶ θάνατος, Agamemnon says (Aristotle, *Politics* III., 1285 *a*: the words are not in our Homers). Readers of *Peveril of the Peak* will remember the indignation of the Crown

own hands by decreeing the abolition of capital punishment; but the power which tied may at any time untie. "The slaying of an evil-doer is lawful inasmuch as it is directed to the welfare of the whole community, and therefore appertains to him alone who has charge of the community; as the amputation of an unsound limb belongs to the surgeon, when the care of the welfare of the whole body has been entrusted to him. Now the care of the common good is entrusted to rulers having public authority; and therefore to them is it lawful to slay evil-doers, not to private individuals. . . . To do a thing for the public good that hurts no man, is lawful to any private person; but if the doing be with the hurt of another, it ought not to be done except according to the judgment of him to whom it belongs to estimate what is to be withdrawn from the parts for the good of the whole" (St. Thomas Aquinas, *Summa*, II–II, q. 64, art. 3).[1] The 'whole community' here

lawyers at the Countess of Derby, who in 1662 sentenced one William Christian to death and executed him on the strength of the title 'King in Man,' then borne by the Earls of Derby.

[1] Why then may not government stamp out bubonic plague as we once stamped out rinderpest, by slaughter of the first infected victims? The answer is briefly, that no man may be exterminated as a beast, who does not liken himself to a beast by anti-social crime, of which point the State is judge. See my *Ethics and Natural Law*, pp. 349, 350, and *Aquinas Ethicus*, Vol. II. pp. 40–42.

is the self-sufficient community, the State. The argument fails to apply to the father of a family, because domestic, fatherly, or paternal government is primarily for the good of the individual governed, as an individual. Speaking of what obtains ordinarily, or *per se*, not of what is *per accidens*, or incidentally, it is not good for the individual to be hung. A criminal is not hung for his own benefit, but for that of the community, as the example of amputation shows. But the government which rules primarily for the good of the community and the general weal of the body politic, is civil, not paternal, government. Therefore the rod belongs to the *pater familias*, but the axe to the proconsul.

§ 41. There is no State of States. When States quarrel, there is none that can lay his hand upon both disputants and compel them to an arrangement. This is the drawback to international law, that there is no tribunal to enforce it, no sanction of punishment for the violation of it. I speak of things as they are, not as they might perhaps have been. State cannot punish State for a breach of international law, or treaty, or convention, or for refusal to abide by arbitration. Punishment is a function of authority: but a State is essentially sovereign, not under the authority of any other State, or combination of States. States cannot punish

one another: they can only defend themselves one against another, — a very different thing. The self-defence of States is war, a self-defence of giants. The authority of a State in war is exerted over its own subjects, compelling them to prosecute the war according to their several conditions, paying the war-tax, and actually fighting in person, as the State shall see expedient, meanwhile rendering no aid to 'the king's enemies.' This common concurrence is due to the unity of the State. Where the State is small, like the Greek City States, war becomes a very present reality to all the citizens. Sometimes at Argos or Corinth a whole generation of youth was mown down by the scythe of death in a single battle. They died for their country and at the bidding of their country, which authorised them to strike in its name, and in so striking to expose themselves to the sentence that all who take the sword shall perish by the sword. A war does not constitute all the inhabitants belligerents, but only such as the State shall definitely enroll, and shall in some manner signify to the enemy to be persons empowered to bear arms in the public cause. *Audiant agrestes.*

§ 42. The State should not be the only association besides the family, and the municipality, which was in ancient history the State.

Private associations must be permitted to flourish. The absorption of all private associations into the State, or the municipality, makes a good definition of Socialism, or Collectivism, in its most outrageous form. Not being Socialists, we shall be champions of the right of private association, as a right which the State should superintend and moderate, not suppress. Where public control is unnecessary, or of dubious advantage, it should not be applied to such bodies. The State is strong by the energy and spontaneous activity of its individual citizens. Energies grow by exercise: spontaneity bursts out of freedom, and is apt to die of swathing bands.[1] At the same time

[1] Plato's *πολῖται* are not 'citizens,' as that term is understood in the United States: they are salaried functionaries of State. Plato will not allow a citizen to be an artisan: the office of citizen is enough occupation (*Laws*, VIII. 846 D), though of this condition of exemption from private cares the philosopher is not without his misgivings, and labours to show that his endowed model citizen will have enough to do in the practice of virtue, under the pressure of the multitudinous *νόμοι* and *δίκαι*.

I can imagine no better argument than a study, — unless it were an actual experience, — of the intolerable meddlesomeness of Platonic government to convince a man that some limit must be set somewhere to civil authority. The antithesis of statesman and philosopher reaches its height in Plato, most unpractical of geniuses, most visionary of politicians. It has been proposed, on the strength of passages like *Rep.* III. 403 B, C, *νομοθετήσεις κ.τ.λ. εἰ δὲ μή, ψόγον ἄμουσίας καὶ ἀπειροκαλίας ὑφέξοντα*, to extend the meaning of *νόμος* to include public opinion. But Plato was quite aware of the difference between law and public

the State will sternly suppress any private association that exercises tyranny or intimidation, that foments rebellion, that sets aside lawful contracts, or levies what is tantamount to private war. The State will suppress such associations, wherever it is worth while making them conspicuous by that attention.[1]

opinion (cf. *Laws*, V. 730 B, ὅσ' ἂν μὴ νόμος ἀλλ' ἔπαινος παιδεύων καὶ ψόγος), and admitted that some matters were better left to the latter (*Rep.* IV. 425 B, C, D). He looked for the advent of a despot for the establishment of his νόμοι (*Laws*, IV. 709 E *sqq.*; V. 735 D). He defines the province of νόμος (*Laws*, I. 631 B–632 C). One of its functions was to 'invigilate' over old men in their cups (*Laws*, II. 671 B–E).

In *Laws*, V. 746 A, B, C, Plato defends himself on the charge of being unpractical: his concern is with ideal excellence: he leaves practical men to attain it as nearly as they may through the rough-and-tumble ways of life. In *Laws*, VI. 773, he has the good sense to admit that physiologically desirable marriages cannot be arranged by law. He deprecates overminute legislation in *Laws*, VII. 788 A, B; and in 823 A he says that the good citizen will obey counsels which are not made matter of law. On the other hand, he writes (*Laws*, XII. 942 A, B, C, a remarkable passage) as though he would carry the precision of military obedience into every detail of private life. It is well to remember, what Greek political writers did not sufficiently recognise, that there is other obedience and other authority besides civil obedience and civil authority; and no obedience and no authority can dispense a man from the necessity of being a conscientious and intelligent lord at home, or from the exercise of the virtue of prudence (St. Thomas, *Summa*, 2^a–2^{ae}, q. 47, art. 12; *Aquinas Ethicus*, vol. II. p. 1).

[1] On the subject of laws against private associations, I may observe that the majesty of law is ill served by provoking sober-minded and conscientious persons to turn law-breakers. Yet I would not deny that there is a certain wisdom in passing laws

§ 43. Philosophy is capable of considering man in the abstract, away from any determination arising from contingent facts of history. Such a contingent fact is Christianity. Christianity is not a factor of human nature as such. This is sometimes expressed by saying that Christianity is supernatural. This abstraction enables us for the nonce to set aside the problem of Church and State. Naturally, man is a religious animal as much as he is a political animal. No main tendency of human nature can have its fulfilment except under some social organisation. If learning is to flourish among men, there must be learned societies: if religion, religious societies. Whether the political or the religious element of his nature lies deeper in man, we need not enquire; nor again whether the one exigency can be satisfied without the other. Certainly the experiment has never yet been tried, of a political community unsustained by any religion. It might issue in an explosion. Its history might be

not meant to be executed, or keeping such laws, when passed, on the statute-book as 'a rod in pickle.' A statesman must do something to satisfy popular sentiment, even when unwise. A working government cannot afford to be overpunctilious about logic and self-consistency in all things. Where the laws are generally wise and well administered, some little grimace of oppressive legislation, remaining or becoming a dead letter, will be no serious blemish on the majesty of law. Still, it is a blemish, and ought to be removed in time.

wound up in one sentence, *the fall of that house was great.* Religion will last as long as politics. What then should be the attitude of the State towards religious bodies? Should there be one religious society, conterminous with the State, the ideal of the ancient polities, and of Queen Elizabeth and Archbishop Laud, as also of the Solemn League and Covenant men? Or should there be a multitude of private societies, competing with one another, the State acting the policeman to keep the king's peace between them? Should there be any national religion by law established? All these questions of higher politics have two solutions, one theoretical and ideal, the other practical and suited to facts as they are. We welcome the solution at present obtaining in England as the best practical for our time.

§ 44. The academic question "whether the magistrate have or ought to have any compulsive and restrictive power in matters of religion," was gravely argued in a Council at Whitehall, December 14, 1648.[1] Ireton argued for the affirmative, appealing to the provisions of the Mosaic law. Goodwin referred the case to the discretion of the people.

[1] See the discussion in the *Clarke Papers*, edited by Mr. Firth for the Camden Society, from Mss. in Worcester College, Vol. II. pp. 71–131.

"Magistrates," he said, "have so much power as the people are willing to give them." Nye took much the same line, saying, "Whatever a company of people gathered together may judge tending to the public good, or the common weal, that they have a liberty to do, so long as it is not sinful." He appeals then to what I should call the principle of Voluntary Public Control, which he thinks may be extended to religion. The axiom that the people are the source and origin of civil authority, had a firm hold on the mind of all these anti-monarchical disputants. They professed to be recovering Anglo-Saxon liberties, buried under six centuries of Norman oppression. The leading debater was Ireton. Cromwell showed himself shrewd and practical. Ireton's ideal was abolition of King and Lords, and a House of Commons elected every two years by electors having a certain amount of real property, — this House not to be omnipotent, there being certain powers reserved and not entrusted to them (*Papers*, vol. II. p. 177). Ireton failed to see, what Cromwell was presently to demonstrate, that such a House was too unwieldy and too unstable a body to govern in time of danger.

§ 45. Besides the proper and essential functions of civil authority, functions necessary to the conservation of any maturely organised

political society, there are other functions postulated by public convenience, which government, imperial or local, may take up, if the people by general consent will have it so. This may be called the principle of Voluntary Public Control. It goes towards clearing up the difficulty which we all feel in fixing the exact bounds of civil authority, what the State may do and what it may not do in the way of abridging the liberty of the individual.[1] According to this principle, there is an inferior and a superior limit to civil authority; I mean, there is a minimum of civil authority which the maturely developed State can never forego, and there is a maximum which the same State can never exceed, it being the utmost fulness of power which any State can ever carry. Between these two limits civil authority is just what the people as a whole wills that it shall be.[2] The

[1] Thus Mr. Jenks, "To dogmatise upon the proper limits of State interference would be pedantry of the worst type" (*History of Politics*, pp. 141, 143). State interference can have no *legal* limits, inasmuch as the State makes the law; only physical and moral limits. It is more important to assert the existence of such limits than to trace them as though one were a member of a boundary commission. The principle of voluntary public control has this advantage, that it is not too rigid for facts and futurities.

[2] But in spontaneous admissions of State interference, *e.g.* in the matter of education, special regard should be had for the rights of minorities, where there is a strong minority against interference and tenacious of their liberty.

State thus becomes the organ of public opinion. There is a clear trend of public opinion to widen further and further still the region of government control. We are imbibing Greek notions here. The 'shrinking of space,' as it is called, due to our rapid means of intercommunication, brings into view possibilities in the Nation State, which formerly could have been contemplated only in the City State. We are looking to the State, and to educational bodies chartered by the State, and to other reforming agencies abetted by public opinion and statute law, to assume certain moralising and spiritualising offices, which in the Middle Ages were accounted proper to the Church. How far the State is capable of discharging such offices, we must wait to see. Thinking men are feeling the need of some further moral government of the masses of our population. Our people are getting out of hand. The truth is rising on the horizon of our experience, that spiritual freedom is not advanced by the extinction of spiritual authority. In the natural order of things the guardian of public morality is public opinion, or, as in this connexion it is called, the public conscience. The public conscience may empower the State to clothe with legal sanctions some rule of morality which otherwise would not easily fall within the cog-

nisance of the State, — an axiom not to forget in considering the prohibition of indecent performances in public theatres and of the exhibition of indecent pictures for sale. Such prohibition is vain where the public conscience does not support it: at the same time the prohibition might do something to support the public conscience. Thus on the matter of the liquor traffic we find the public conscience confronted by a class interest: we have still hope of the State stepping in to good effect there. There is yet another traffic in frailty and sin, which might be better confined to regions where they will find it who go thither to look for it. And we must be vigilant against the spread of disease. But some evils are endemic in human society.

§ 46. To recapitulate. The origin and extent of civil authority, considered ethically and historically, makes a tripartite theme: why such authority ought to be; how it has gradually come to be in various ages and places; what is its extent?[1] The ethical side of the subject embraces the answer to these two questions: (Q. 1) Why must I obey the State? (Q. 2) What can the State command me to do?

[1] For extent, 'is' and 'ought to be' need not be distinguished if we speak of the authority that is 'practically available without injustice' (§ 30).

(Q. 1) I must obey the State, St. Paul says, *for conscience' sake* (Rom. xiii. 5). Conscience bids me be a man, that is, not merely to rank as a member of the human genus, and come under the census as an item of population, but to lead the conscious, intelligent, active life of a man. That I cannot do in solitude: I mean the normal man cannot do it, the anchorite is out of our purview, ἢ θηρίον ἢ θεός. Cut off from intercourse with his fellows, man is no more man, morally speaking, than the hand of a corpse can be called a human hand (Aristotle, *Politics*, I. 1253 *a*). Nor is the society of the domestic circle sufficient to bring man up to what man should be, unless that circle be one of an aggregate of similar circles, intersecting each other, and coalescing in the unity of a State. I may travel little out of my family circle, but that circle itself is affected, humanised, and civilised, by other circles in contact with it, a contact only maintained in virtue of their civil union. The greatest recluse, a Carthusian monk, or a Poor Clare nun, or a retired collegian, would find the little society of convent or collegiate life a moral impossibility, were it not planted in a land of agriculture and commerce, of peace and order and State-administered law. Neither are recluses born of oaks or rocks: they are scions of families, linked to other families

by ties both connubial and civil. I must then be a citizen, to be a man: at least I must be the subject of some State. I need not take an active part in politics, I need not be a member of the ruling class, but I must be an item in a system of rulers and ruled. That is why I must obey the State, because such is the condition of the humanity that is in me, that I cannot develop as a man unless I fall into my place as subject of some State.

§ 47. (Q. 2) What the State can command me to do, is not such an easy question. The best answer, perhaps, is derived from considering what the State actually does command me, or certainly would command me in readily conceived circumstances. The scholastic adage, *Ab esse ad posse valet illatio*, refers to physical, not to ethical, possibility. But we may apply the adage even in the ethical order, in contemplating the action of a reliably good agent. What Cato actually has done, may be lawfully done, if we are to take Cato for a saint. I am satisfied with the government under which I have lived for more than half a century. I have never been wronged by it, nor do I think it likely ever to wrong me.[1] What that gov-

[1] I take to myself what the laws of his country say to Socrates in Plato's *Crito*, 51 D–52 B. I quote the last words: "Nor did you ever undertake any other journey into foreign parts, as other

ernment commands and would command me, I take fairly to fill the area of control of the individual citizen by the normal State. With this standard before my eyes, I lay down the following functions of government, or categories of obedience due from the subject.

(*a*) The State has the right to tax me, and that apart from my consent, so far as I am a subject, though not apart from my consent in so far as I happen to have some share in the government. Whether I ought to have a share in the government, is not a question that can be answered on abstract grounds, arguments from the nature of man and so forth. It can only be laid down that I ought to have that share in the government which the constitution of my country assigns me. For the matter of taxes, I ought to be taxed constitutionally, with that measure of my own consent which the written or unwritten tradition of my country supposes. But, be it remembered, when I vote taxes, or depute other people to vote them, I am acting as partial ruler: my duty as a subject lies, not in voting taxes, but in paying them.

(*b*) The State may bid me take part in the administration of justice, whether to do

men do, nor did any desire ever possess you to make the acquaintance of any other State or any other laws, but we were sufficient for you and the State which we constitute."

justice upon others as juror or witness, or to have justice done upon my own person or goods as prisoner or defendant.

(*c*) The State may punish my offences against the law by statute penalties, even the penalty of death.

(*d*) The State may enroll me in its armies even without my consent in case of emergency, of which the State is judge.

(*e*) The State may superintend me in any charge that I may have of others, that I do not grossly abuse the same to the detriment of their persons or goods.

(*f*) All my contracts concerning things that have a monied value are amenable to the control of the State, not arbitrarily to set them aside, but to provide for their orderly fulfilment, so far as there is legal evidence for the existence of such contracts.

(*g*) It is an axiom of the casuists that we are obliged to succour a neighbour in extreme need, that is, when we can help, and our help is necessary to him for the averting of imminent grave evil. And if a neighbour, much more a parent. The needs of our country are to us like the needs of a parent. In a great emergency, the State can demand of its citizens every sacrifice and every effort, not immoral. In the siege of Carthage, during those last

months of resistance to the army of the younger Africanus, there was no particle of a Carthaginian's substance, no remnant of his energy, no drop of his blood, that his native city might not have called upon him to expend in her defence.

§ 48. A word further on the historical side of my theme. There is a national infirmity which, as recognised in ourselves, we call 'insularity,' the inability to see things except from the point of view of our own countrymen. Thus the Roman lawyers took Roman law to be law for all mankind, as though nature dictated whatever Rome decreed. We are apt to mistake the peculiar instincts of the English character for main laws of human nature. We forget that civil authority must be suited to civil capacity, which is not everywhere developed as it is in England. English institutions will not bear transplantation in the fulness of their native growth to Sicily. When Ferdinand II. of the Two Sicilies, the much reviled 'Bomba,' in 1848, granted a parliamentary constitution to his subjects, the grant was anything but popular. Petitions from general and district councils and other administrative bodies, to the number of 2283, were sent up, praying for the suppression of the new Constitution; [1]

[1] 'The last struggle of expiring bureaucracy,' believers in the parliamentary panacea will reply. I would ask them, what has

and this Parliament, untimely born, died in a free fight in the streets of Naples. The moral is "to remember that the individualism of the Anglo-Saxon race, and the spirit of self-help and self-reliance which has built up the British Empire, are not to be found among the easy-going, pleasure-loving races of the South of Europe, which prefer to expect in every undertaking the initiative of the State, and allow it to guide them in all their enterprises."[1] Climate, racial character, the fertility or barrenness of the soil, the tendency of the people to agriculture or to commerce, make different constitutional histories. Also it has to be considered whether the State is organised mainly for peace or mainly for war. A 'march State,' continually threatened by powerful neighbours, must maintain much of the discipline of a camp. Law, not Liberty, must be inscribed on its banner. Quite a peculiar build of vessel has been invented to stand the nip of the Arctic ice-pack. Types of governments are as various as types of ships.

§ 49. With our social cravings for commerce and empire, for wealth, education, and art, we

become of the Turkish Parliament, last heard of about 1876–78? A nation may have the machinery of a free government and not know how to work it.

[1] From a review of Mr. Bolton King's 'History of the Italian Revolution' in *The Month* for March, 1900.

take personal security almost as a matter of course. We are organized in large masses for mutual protection. The murderer of one poor girl is tracked and punished, trouble and expense not being spared to that end by those to whom the victim was an utter stranger. It was not ever so. A man's life was protected, and his death avenged, only by the small circle of those who knew him. There was a time when a foreign city was as a wild bees' nest, a thing to rob and destroy. Heroes gloried in the name of πτολίπορθος, 'sacker of cities.' Ulysses and his companions, passing by the city of the Ciconians, do the right thing for tourists of the heroic ages:

ἔνθα δ' ἐγὼ πόλιν ἔπραθον, ὤλεσα δ' αὐτούς.[1]

Governments were then organised, from the subject's point of view, not for liberty, not for empire, but for personal security and protection. A city wall was something to cower and crouch behind: the city gate was barred to keep out the wolf. Much political history is written in city walls, the date and manner of their erection, the guarding of them, their gradual neglect, decay, and disappearance. Early

1 *Odyssey*, IX. 40. I think Dr. Merry's explanation unnecessary, that the Ciconians had been allied with the Trojans. It was more than enough for Homer that they were not Greeks. Honest men in those days, as Thucydides, I. 5, tells us, freely confessed to piracy.

ages were little favourable to the 'rights of man' to a share in civil authority. Men often had no ambition to exercise such authority. Universal suffrage entered as little into their calculations as travelling by steam and electricity. All that the average man craved was to be safe from the marauder. To purchase safety, he was willing to be governed, to pay tribute, to serve as client and retainer, or even as serf. A demagogue would have been stoned by the hands which he pretended to set free, unless indeed his discourses turned on social grievances, the abolition of slavery for debt, and the cancelling of usurious bonds. Otherwise, men invoked strong despotism to shield them from the foreigner and the invader. Social security was based immediately on the strength of the house, clan, or petty city to which you belonged, not on commercial appreciation of peace, and national defences. A sea of violence beat round every city wall, and almost round every homestead. A foreigner once asked me at Windsor whether the castle was fortified. I told him that it was, but that the fortifications were out on the high seas. The enemy was at the gates in the olden time, and the means of keeping him out sadly ineffectual.

Part II. — Criticism

§ 50. Hitherto this dissertation has been mainly expository. The rest of it will be mainly critical of other writers. And first of Hobbes (*De Cive* and *Leviathan*), Locke (*Of Civil Government*), and Rousseau (*Du Contrat Social*). Though these three writers differ widely from one another, they have enough in common to stand on one platform. They all place man initially in what Hobbes and Locke call 'a state of nature,' that is, an extra-social state, as though it were no part of the nature of man to live in civil society. They trace the origin of such society to an arbitrary compact. They all take 'nature' to mean that which man is of himself, in exclusion of what he does for himself, even of what the law of his development imperatively requires that he shall do.[1] Nothing is 'natural' to these writers that involves any act of human will. They see no difference between a 'voluntary' act and an 'arbitrary' act of the will. To them the voluntary adhesion of men to the social system is an arbitrary adhesion, a pure conventionality, — *νόμῳ μέν, φύσει δ' οὔ*: government is a conventionality,

[1] See, to the contrary, John Grote's *Examination of Utilitarian Philosophy*, pp. 169, 207, 208 (and above, §§ 7, 31).

education a conventionality, so are clothes and good manners.[1] They fail to attach due importance to that something in human nature which requires man to provide himself with all these things. They do not see what is implied in the Wykehamite motto, 'Manners makyth Man.' Mr. Bosanquet well says in this connexion: "The peculiar naturalness of the primitive and simple is only an illusion" (*Philosophical Theory of the State*, p. 132). And Aristotle (*Politics*, I. 1252 *b*): "Nature means maturity: what each being is when its development is complete, that we say is the nature of each." Man develops into the citizen. The citizen, then, is the natural man, — man in the true state of nature.[2]

[1] Locke does not go quite so far as this. His 'state of nature' is taken from what he fancies English society would be without government.

[2] Modern languages have the convenience of two words, *physical* and *natural*, whereas Aristotle had only one, φυσικός, and the Schoolmen only one, *naturalis*. Thus the latter speak of *appetitus naturalis*, meaning 'a physical tendency,' and again of *lex naturalis* in quite another sense, meaning 'the moral law.' The ambiguity of the word *naturalis* seems to have misled Hobbes, writing in Latin, and after him Locke and Rousseau. There is no difficulty in admitting that man is not 'physically' a political or social creature. Till we have transcended the physical order we do not enter the region of politics. Politics form no part of physical science, or of what used to be called 'natural philosophy.' It would be interesting to know what sense the word 'physical' bore in 1650. The word occurs twice in Shakespeare, and is a derivative, not of 'physics,' but of 'physic,'

§ 51. Hobbes, like other clear, headstrong thinkers, was a pessimist. All his grim power of language is exerted to set forth the desperate wickedness of human nature. *'E's a stranger, 'eave a 'alf-brick at 'im*, expresses the view which Hobbes thought it natural for one man to take of another. Or rather, there is more kindliness in this speech than Hobbes would allow to the human heart. The words are suggestive of friends and acquaintances, one's own *pals*, at whom 'alf-bricks are not to be 'eaved. But Hobbes's ruffian primeval makes no acquaintances and has no *pals*. He lives in an impartial exchange of 'alf-bricks all round. The Apostle's description of men *filled with all iniquity, malice, fornication, covetousness, wickedness, full of envy, murder, contention, deceit, malignity; contumelious, proud, haughty, inventors of evil things, disobedient to parents, foolish, dissolute, without affection, without fidelity, without mercy* (Rom. i. 29–31), might have been written for Hobbes's mankind in the state of nature. The meaning of the word 'humanity' should be inverted to suit such a notion. The 'milk of human kindness'

meaning 'medicinal.' "Is it physical to walk unbraced?" (*Julius Cæsar*, II. 1). "The blood I drop is rather physical than dangerous to me" (*Coriolanus*, I. 5). In the English Bible the word does not occur.

is dried up at its source. The one remedy for human nature that Hobbes sees is to become unnatural. It is natural for man to live alone: let him take the unnatural course of yoking himself in the society of other men. His nature is to go solitary: let him denaturalise himself by a convention, binding him to live in company. Man, however, cannot be held by fidelity, only by force: let him confer upon the general assembly, which he joins, all that force by dint whereof he originally lived at his own pleasure and made other men subservient to him. In return, the other parties to the convention renounce and will away to the general body all the force that they had severally available for treating him at their pleasure and making him their slave. This convention and compact is the generation of the Leviathan, or State. The result is thus formulated: "Outside the State, any man may be justly robbed and murdered by any other man; within the State, by one only" (*De Cive*, ch. 10, n. 1), namely, by the sovereign. Man then by nature is placed in an "ill condition." The one kind thing that nature does for him is to add "a possibility to come out of it, consisting partly in the passions, partly in reason." The passions involved are "fear of death and desire of commodious living." Reason, in Hobbes's theory, has two opposite

effects: it kindles man's passions by enlarging his view of things desirable, and on the other hand it condemns the unrestrained indulgence of passion.[1] "And reason," he adds, "suggesteth convenient articles of peace, upon which men may be drawn to agreement: these articles of peace are called 'the laws of nature.'" The first of these laws is "to seek peace, so far as possible"; the second, "where peace is impossible, to use all advantages of war"; the third is to observe contracts; and there are others (*Leviathan*, Pt. 1. chs. xiii., xiv., xv.). But in mankind generally, he observes, reason condemns in vain the excesses of passion; and no man is bound to be better than other men around him, no man need make himself a martyr for reason's sake. Thus reason argues fruitlessly, till the State supervenes to compel man to be rational. As for those 'laws of nature,' that make for peace, they bind only *in foro interno*, or in inward velleity, not *in foro externo*,[2] or actual practice, till other men observe them, which never will men do in the state of nature. What alone makes the 'laws of nature'

[1] Cf. Romans vii., which Hobbes must have had in view and construed to his own purpose.

[2] Hobbes misapplies these terms, which refer in canon law to the court of conscience and the external court, civil or ecclesiastical. Conscience does bind a man to external acts.

efficacious is the coercive force of Leviathan: till that comes into operation, those laws are a dead letter.[1]

§ 52. Rousseau's optimism is a match for the pessimism of Hobbes. To Rousseau every impulse of nature was good. The one thing needful for human perfection, he thought, was to give nature full fling and liberty. Its riot and excess would work its own cure, if not opposed by artificial checks. All evil was born of conventionalism, formalism, artificiality. All liberty was good: for limits, let it find them for itself, as a river does in flood. To the objection that the freedom of one man to do as he liked involved the constraint of

[1] The *Imitation of Christ*, a book which Hobbes is not unlikely to have read, lends itself in one chapter (III. 55) to an adaptation, which is an extraordinarily felicitous rendering of the Hobbesian philosophy. Remembering how he calls the Leviathan "the mortal god," we indite the following, 'Hobbes's Prayer': —

'Great Leviathan, put upon me thy constraint, so necessary to my welfare, that I may overcome my most wicked nature, dragging me into sin and perdition. Resist its passions I cannot, except under thy terror and constraint. The little power of good left in my nature is like a spark buried in the embers: that is sheer natural reason, surrounded with great darkness, still retaining the power of judging between good and evil, and of separating truth from falsehood, but unable to carry out all that it approves. There is need of thy constraint, and strong constraint, for the overcoming of my nature, or of that viciousness and weakness of corrupt nature which has come to stand for nature.'

another man to have done to him what he liked not, Rousseau replied by denying the supposition: in the ideal state of nature no man would cross the path of any other man: all would live in the woods (tropical forests, we presume), free, independent, solitary. So, Rousseau affirmed, men did live in the happy days of old, ere fetters were forged, ere kings were crowned, and evils multiplied upon the earth.[1] Being so happy, how came men ever

[1] En considerant l'homme tel qu'il a du sortir des mains de la nature, je le vois se rassasiant sous un chêne, se désaltérant au premier ruisseau, trouvant son lit au pied du même arbre qui lui a fourni son repas, et voila ses besoins satisfaits. . . . Le premier qui se fit des habits ou un logement se donna en cela des choses peu nécessaires, puisqu'il s'en était passé jusqu'alors, et qu'on ne voit pas pourquoi il n'eût pu supporter, homme fait, un genre de vie qu'il supportait de son enfance (*Discours sur l'origine de l'inégalité*, pp. 42–47) — a principle which would bar all progress. It is now known that Rousseau derived this idea of savage beatitude from a book of Père du Tertre, a missionary among the Caribs. Rousseau's supreme delight was passive enjoyment, following the impulse of the hour, which was also characteristic of Shelley. He would lie on his back in a boat on the Lake of Lucerne for hours, watching the clouds. He envied races of men free from the elbowing and jostling of civilised life, as he saw it in the *ancien régime*. Compare Livy's admiration of the early Romans, as he conceived them, and Tacitus's *Germania*. In the *Contrat Social*, however, Rousseau goes back somewhat upon the *Discours*. He even admits that "although in the civil state man is deprived of many advantages that he derives from nature, he acquires equally great ones in return: . . . if the abuses of this new condition did not often degrade him below that from which he has emerged, he ought to bless without ceasing the happy moment that released him from it for ever,

to quit this paradise of individualism? Men had every reason for quitting Hobbes's state of nature, where life was "nasty, brutish, and short"; but for the abandonment of Rousseau's natural bliss of savagedom the philosopher can assign no better reason than *quelque funeste hasard.* The *Contrat Social* is supposed to preserve for the citizen the liberty of the savage: he always does what he likes, because he has no other liking than the fulfilment of the General Will, even when it puts him in irons or hands him over to the executioner.

§ 53. Never has political conclusion found swifter and wider acceptance than that of the sovereignty of the General Will. The Leviathan is buried,[1] the Social Contract torn up: but the General Will, or what purports to be such, rules Europe and America. The transcendental meaning now attached to the phrase 'General Will' I will consider presently: but in Hobbes and Rousseau, as we read them, the General Will is: —

First and principally, the unanimous consent of all individual wills without exception, agreeing together to constitute the Leviathan, or the sovereign people.

and transformed him from a stupid and ignorant animal into an intelligent being and a man" (*C. S.* I. 8; cf. II. 4).

[1] Not at Oxford.

Secondly and derivatively, as interpretative of that unanimous consent once for all given, — in Hobbes, the General Will is usually the will of the monarch, Leviathan being usually a single person;[1] in Rousseau, the General Will is the will of the majority of the sovereign people. This is the theory of plebiscites.[2]

§ 54. The strength of Rousseau is his brilliant style and magnificent audacity. Self-consistency, probability, and historical research he flings to the winds. The characteristic of Hobbes is force. His writing is like mountain scenery, grim, bold, awe-inspiring. For insight into real points at issue, for following an argument into all its consequences, for clearness of conception and expression, I doubt if any English writer on philosophy has ever been the equal of Thomas Hobbes. His errors are manifold and extreme, but *μέγας μεγαλωστί*. The more you struggle with him, the less you like him, but the more strength you find in

[1] See the figure in the first page of Molesworth's edition of Hobbes's works. There is much political philosophy, of a kind, gathered in that figure. The figure in Molesworth is an exact reproduction of that on the title-page of the first edition of the *Leviathan*, London, 1651, in the Bodleian Library.

[2] It would be more correct to say that, in Rousseau, the general will is the common will of the common good; which, in an ideal community, is ascertained by counting heads (*Contrat Social*, IV. 2). See § 68.

him. He is a veritable Cromwell in philosophy. Still Hobbes's 'state of nature' is wholly uncountenanced by history and anthropology; and if it is not a fact of history, what is the speculation worth? Not even Darwinism bears it out. Supposing, for argument's sake, our ancestors to have been beasts, they were at least gregarious beasts.[1] It was never good for any hypothetical anthropoid to be alone, like a beast of prey. Out of sheer malevolence, utter selfishness, contempt and hatred of one's kind, humanity could never have been evolved. No compact, borne out by coercion, could have been a remedy for such radical malice. An agglomeration of evil individuals cannot have composed a beneficent State.[2] Love has no place in Hobbes's philosophy: yet love, the Greek philosopher said, is the bond of the universe.[3]

[1] The lowest savages are quite inoffensive.

[2] Perhaps it was the consciousness of this that made Hobbes so much prefer monarchy to democracy.

[3] "Fire and Water and Earth and the mighty height of Air, dread Strife, too, apart from these and balancing every one of them; and Love among them, their equal in length and breadth. Her do thou contemplate with thy mind, nor sit with dazed eyes. It is she that is deemed to be implanted in the frame of mortals. It is she that makes them have kindly thoughts and work the works of peace" (Empedocles, quoted in Mr. Burnet's *Early Greek Philosophy*, p. 222; cf. Plato, *Gorgias*, 507 E). In Hobbes, love appears to mean sheer sensuality and selfishness.

§ 55. Locke's treatise, *Of Civil Government*, is a political pamphlet in defence of the Revolution of 1688, — as he says, "to establish the throne of our great restorer, the present King William, to make good his title in the consent of the people." Locke may be said to have domesticated the Leviathan, and thrown about the shoulders of its author that mantle of respectability and moderation which Englishmen love. In my *Ethics and Natural Law*, pp. 307–309, I have animadverted upon what I call the 'Aggregation Theory,' as it stands in Locke, the theory which makes civil authority a mere sum and mechanical mixture of the powers of the individuals who throw their lot together in one commonwealth. I have argued that the State is not a mechanical agglomeration, but an organic whole, endowed with powers which its individual components do not severally possess.

§ 56. If the will of the majority is to be recognised as uniformly supreme in politics, if the State is to be defined *magistra et gubernatrix sui multitudo*, other grounds of such recognition must be sought than those supplied by Hobbes and Rousseau. No argument is worth a hearing that recurs to a 'state of nature.' A less assailable and more commanding position, — indeed the grandest of all positions in

political philosophy, — is this, that *government is for the good of the governed* primarily and directly, not for the good of them who hold the reins of power. Civil authority is not an estate, but a ministration: it is the service of the persons subject to its sway.[1] Testing, then, the less safe principle by the safer, I ask: Is self-government, in the sense of government by the majority, always for the good of the multitude governed?[2] Philosophers have talked of

[1] "What is man, — or rather *mankind*, for so we have styled a *nation*, — better than a herd of sheep or oxen, if it be owned like them by masters?" (Thomas White, *Grounds of Obedience and Government*, London, 1655. Ground XVI). *Gerendum vero* (imperium) *est ad utilitatem civium: quia qui præsunt ceteris hac una de causa præsunt ut civitatis utilitatem tueantur. Neque ullo pacto committendum unius ut vel paucorum commodo serviat civilis auctoritas, cum ad commune omnium bonum constituta sit* (Leo XIII., Encyclical on the Christian Constitution of States, November 1, 1885). So, too, Aristotle, *Politics*, III. 1279 *a*. The principle was first formulated by Plato, *Rep.* 345 D. "Every power of command, as such, regards the best interest of none other than the subject commanded and cared for." Aristotle observes that this does not hold good of a master's authority over his servant, which, however, belongs not to the political, but to the economic or domestic order.

[2] "If the people are observant of moderation and principle, and carefully watch over the common interest, it is right to enact a law empowering such a people to appoint their own magistrates. . . . If in course of time the same people become gradually corrupt, sell their votes, and place atrocious criminals in office, the power of conferring offices of State is rightly taken away from the people, and reverts to the discretion of a few good men" (St. Augustine, *De libero arbitrio*, I. 6).

'all men,' as though all men were the men of their acquaintance, forgetting how small a portion of mankind lies within the civilised area in which philosophers move.[1] There are capable and incapable multitudes, as there are capable and incapable individuals. A multitude may be too frothy, raw, and undeveloped, for self-government. Or they may be too depraved, great wickedness having rendered them politically effete. Cicero's whole career as a statesman was spoilt by his not discerning, what to Julius Cæsar was plain enough, that the Senate and People of Rome had grown too corrupt for republican institutions to continue. And, in view of the corruption of the Athenian Demus, it may be doubted whether the anti-Macedonian policy of Demosthenes did not deserve the appellation of 'heroism, but not statesmanship.' Phocion at least thought that it did. Or a multitude may be too indolent to care for self-government beyond the range of parochial and municipal matters. Except for an occasional recurrence to the referendum, no one now advocates government by the direct vote of the majority: it is no government for empires, as

[1] Forgetting, I should say in particular, the difference between European and Asiatic, the one generally aiming at self-government, the other acquiescing in passive obedience to what he regards as the unalterable will of Heaven, uttered by princes.

even Rousseau saw. Nor is the "government of the best on the approval of the majority," — μετ' εὐδοξίας πλήθους ἀριστοκρατία, as the Platonic Menexenus has it, 238 D, — a practical polity everywhere. No doubt of its excellence where it is practical. The people's eye is the guardian of the civil ruler, the people's approval his strength; and the study and use of government advances the people in intelligence and vigour. But the people thus dignified is not a mere numerical majority. Their individual wills are not merely numbered, but weighed. They are a reverential, or, in Walter Bagehot's phrase, "a deferential people," confessing superior qualities in some men, and assigning place and consideration to those qualities over and above the simple fact of a man being a man. Universal suffrage, an excellent thing in itself, as giving every dweller in the country an interest in the government, should be tempered by some further preponderance allowed to the natural chiefs of society, to the noble, the wealthy, and the educated.[1]

[1] In the *Clarke Papers*, Vol. I. pp. 301–308, there is an interesting discussion between Ireton and Rainborow at the Council of Officers at Putney in October, 1647. The discussion is neatly given in Mr. John Morley's *Oliver Cromwell*, Bk. III. Ch. III., "The Officers as Politicians." Rainborow argues for manhood suffrage of every man born in the country. Ireton stands for a property qualification, on the usual 'stake in the country' argu-

§ 57. The good of the people being the end and aim of civil government, there are three instruments for compassing it, — the will of the people, the discretion of the ruler, and the written or unwritten constitution. Of the three, the third is the safest, though none of them works well in isolation from the other two. Plato appears his worst in such a passage as his *Statesman*, 296–300, where he goes the length of saying that "a wise government" — and what government does not think itself wise? — "may do as it likes, and cannot do wrong," *πάντα ποιοῦσιν τοῖς ἔμφροσιν ἄρχουσιν οὐκ ἔστιν ἁμάρτημα*, and ridicules constitutional government as a *δεύτερος πλοῦς*, or second-best article. The practical is usually a second-best. See Aristotle's just criticism, *Politics*, III, 1286 *b*. Yet even Aristotle, with his all-licensed hero-king (*Politics*, III 1284 *b*, 1288 *a*), makes a very near return to Plato.[1] A much more practical man

ment. Universal suffrage, joined with the multiple vote, as suggested in the text, seems the best theory in the abstract. All political theories are in the abstract. It is from inability to descend from these abstract heights to the region of concrete proprieties that political philosophers, from Plato to J. S. Mill, have made such poor politicians. But 'one man, one vote' is certainly a bad theory.

1 "That single, sole ruler . . . ruling with virtue and knowledge . . . conspicuous at once as excelling in body and in mind" (*Statesman*, 301 C, D, E) is quite the Aristotelian hero-king.

than Plato, Oliver Cromwell, took Plato's line. "'Tis the general good of the kingdom that we ought to consult: that's the question, what's for their good, not what pleases them." So Cromwell told the officers of the army at Reading, in July, 1647. In the November following, the violence of the soldiers drove him to insert this qualification, that you must think sometimes of what pleases people, else they will not endure what is good for them. Seated on his chair of state in Westminster Hall, in 1653, the Protector reverted to his maxim in its original form. With the good of the nation before his eyes, and his own discretion for the measure of it, Oliver, Lord Protector, carried matters with as high a hand as any royal Charles or James, abundantly laying himself open to the cynical observation of Hobbes, his contemporary, that when men cry for liberty, they want power.[1] "Wise (unconstitutional) government" makes a large figure in English history from Henry VIII. to James II. Since 1688 our government has often been unwise, but never unconstitutional, and the good of the people has been much better secured.[2] There is, how-

[1] See Mr. John Morley's *Oliver Cromwell*, pp. 232, 240–241, 395, 405, 406.

[2] I may remark that a too fervent worship of the 'Real Will,' unchecked by constitutional forms, would readily lead one to err with Plato and Cromwell. One should be loth to err, even

ever, a noble passage in Plato's *Laws*, the child of his old age, which I take for an explanation and rectification of the somewhat crude utterances of his *Statesman*. I refer to *Laws*, IX. 874 E–875 D, the passage beginning: "Men must necessarily frame laws, and live according to laws, if they are not to sink to the level of the most savage beasts." The need of laws he refers to the fact that human nature cannot be relied upon for a steady discernment of the best course and a steady will to take the same, the best course being that which makes for the public advantage, in the pursuit of which the good of the individual also is ultimately best realised. Absolute power spoils a man, and turns him to self-indulgence and self-aggrandisement. Hence the necessity of law and order and constitutional procedure. Still constitutionalism is, after all, a second-best sort of thing.

If ever by some divine dispensation there were born a man on earth with a nature capable of these attainments (perfect political wisdom and self-control), he would stand in no need of laws to rule him: for neither law nor order is superior to knowledge, nor is it meet for mind to be subject

in such authentic company. I may further add that an undue pressing after a formula, to hold good of all States, brings on a deadlock in political philosophy. To many anxious questions the one safe answer is, 'It depends on the constitution,' — written or unwritten. And constitutions vary.

or slave of any, provided it be genuine mind, truly free according to nature. But as things are, such a mind nowhere is found, except some faint traces: therefore, as a second-best course, we have to take to law and order, which has an eye for that which is for the most part correct, but not for the correct thing absolutely and in every case.

There is some residual disadvantage in living under law, and constitutional obedience will bear hard at times for a time upon its best subjects.

§ 58. Two seventeenth-century Catholic writers on government may be noticed here. Thomas White, a secular priest, resident in London, was the sun and centre of a small planetary system of religious controversy, as old libraries bear witness. He became intimate with Hobbes, and, a contemporary tells us, would "visit Mr. Hobbes and argue till the two were red in the face." The fruit, perhaps, of these discussions appears in a small volume which White published in 1655, *Grounds of Obedience and Government.* He rejects Hobbes's state of nature, saying with much truth, "When I speak of a nation, methinks I speak of nature itself" (Ground IX.). But, agreeing with Hobbes, he will not allow that reason has any motive for embracing the universal good other than the interest of self in that good. "Reason takes nothing to be good but what is good to

himself" (Ground VI.). "It is past dispute that for him who expects nothing in the next world there can be no rational motive of voluntarily endangering his life for the commonwealth, if himself be not particularly interested in it" (Ground XI.). This statement would rather be true if put the other way, that he would have nothing to expect in the next life, who had and could have no other rational motive than private interest for voluntarily exposing his life on behalf of his country. The fact of his being a mere creature of self and selfishness, devoid of all appreciation of universal good, would argue him to be devoid also of intelligence, and consequently of all principle of immortality.[1] Reason in White's argument, as in that of Hobbes, is not sufficiently raised above the animal level. Hence I take exception even to the following aphorism, plausible as it appears: "The proper natural way of governing is by making the obeyer understand that it is his own profit which the action aims at, so as to make him work out of the inclination of his own will and the dictamen of his own understanding" (Ground I.). The motive of civil obedience here indicated is not wrong, but imper-

[1] Of most men we may say that their soul slumbers within them, and their intelligence is stunned by the noise of life. Still it is there.

fect and informal. It is a useful motive for pacifying the recalcitrant and refractory: it is not the philosophic motive and scientific reason why we pay obedience to the State. The maxim is a pedagogue's maxim, not a statesman's, except of a statesman speaking popularly, as he will do at an election. The precise aim of the legislator, as distinguished from the parent and the schoolmaster, is not the good of this and that individual, but the common good. Therefore, if any individual obeys the State mainly in view of his own particular good, he is not obeying according to the exact drift of the law, he is not obeying as a citizen. He may readily complain that, though obedience be the best thing for him under the circumstances, and though he has some personal interest in the social order, yet that order befriends his wealthy and honoured neighbour much more than it befriends him. He becomes thus a lukewarm adherent of a State which he conceives to be organised chiefly in the interest of the better classes. He would like to see society remodelled to his greater private advantage. He has not learnt to regard the State as an organism, and to rejoice in the life of the organism as a whole, and his own subordination to it. There is no real patriotism in that man's heart, no public spirit, too much individualism, too much

of the 'casual self.' The relation between society, once formed, and its rulers, White views as a contract of trust, thus falling in with the theory of Locke and the Whigs. "Such trustees are called governors" (Ground VII.). Like Locke, too, White is jealous of government interference. "Wherein, then, consists the liberty of every subject? In not being controlled in his private affairs. . . . If he be molested in his domestic *ménage*, otherwise than when the common weal demandeth his assistance, he is not free. But, for serving the common, it is the freest act he hath. It was his choice to elect it, it is his good to conserve it, and it will be his destruction to infringe it" (Ground XV.). He says of the people in relation to their prince: "They entrust him with more than they understand; and so his power is to proceed according to his understanding, though it cross theirs" (Ground XI.), words which remind us of Burke, *To the Electors of Bristol.* Rousseau would have written them, not of what the people entrust to the prince, but of what the individual gives in trust when he becomes one of the people. I end with two shrewd sayings of Thomas White. "As for the people, they are but a weak part, if the Governor be wise" (Ground XIII.). "*Truly best* signifieth that it were not only best if it had been fore-ordered, or if it were

in practice, but that it be best to be brought into practice" (Ground XI.).

§ 59. Francis Suarez, the celebrated theologian of the Society of Jesus, is the author of two elaborate legal and political treatises: one, *De Legibus*: the full title of the other is, *Defensio Fidei Catholicæ adversus Anglicanæ Sectæ errores, cum responsione ad 'Apologiam pro juramento fidelitatis et Epistolam ad Principes Christianos' Serenissimi Jacobi Angliæ Regis*: the date is 1612. James I. had claimed to have his sovereignty immediately from God, and for his exercise of it to be responsible to none other than God, not therefore to his people, and not to the Pope. The truth in the king's allegation is this: (1) that sovereign authority in each State is of its own nature absolute and irresponsible, so far as States are concerned; State is not accountable to State, nor one private individual to another as such: (2) that sovereign authority is of God, inasmuch as it meets an exigence of man's rational nature; and whatever the rational nature of man exacts, that God as Author of nature commands,—all which truth we have already seen. But James I. erred in identifying sovereign authority with monarchy, as though monarchy and sovereignty were convertible terms. Sovereign authority is not tied to monarchy, nor to aristocracy, nor

to democracy, nor to any other definable polity. Nature demands that there be a State, and the being of a State involves civil authority, and civil authority must have some mode of distribution, and the mode of distribution of authority makes the polity. Therefore, nature demands some polity, but not this or that polity in particular. Civil authority is a sacred thing, a morally imperishable thing. But cast it into the form of monarchy, it is not more sacred than it would have been in the form of republican government. Neither monarchy nor democracy is imperishable: in certain cases the one may lawfully give place to the other.[1] The point, therefore, which James I. and Charles I. and the Stuarts generally ought to have considered, was whether by the precedents of English history (for certainly not by natural law or special divine appointment) the government of England was an absolute monarchy, with the whole civil authority centred in the single person of the king, according to the precedents of Cæsarism at Rome and Constantinople.

§ 60. The following quotations exhibit the theory of the origin of civil authority which Suarez proposed, in opposition to the king of England, and not altogether to the liking of the king of Spain. The point that Suarez

[1] See my *Ethics and Natural Law*, pp. 328, 329.

labours to make is this, that civil authority is the gift of God immediately to the civil community, or commonwealth; and that the commonwealth gives it to the king, who thus holds of God mediately, not directly: in other words, that government is the creation of God, but kings are the creation of men, — a speech of utter treason in the ears of His Sacred Majesty James I.

"The supreme civil authority, considered in itself, is given immediately by God to men, when they are gathered into a State, or perfect political community. But that involves no peculiar positive institution, or gift altogether distinct from the production of human nature, but follows naturally, by force of the first creation of that nature. Therefore, by virtue of the said gift, this authority is not in one person, nor in any special assembly of many persons, but is in the whole perfect people or body of the commonwealth. . . . For this civil authority is natural: since, without any intervention of supernatural revelation or faith, this authority would be recognised by the dictate of natural reason in the human commonwealth as altogether necessary to its conservation and equable arrangement; which is a sign that such authority is in the said commonwealth as a *proprium*, following upon the nature, or crea-

tion and natural institution of the same. . . . All things that follow upon a nature are the immediate gift of the proper and immediate author of the same nature: but this authority is a *proprium*, following upon human nature as gathered into one body politic: therefore it is given immediately by God as Author and Provider of that nature. . . . For, by the mere fact of men being gathered together into the body of one State or commonwealth, the said authority results in that community without the intervention of any created will, and that with so great necessity that the result cannot be hindered by any human will, which is a clear sign that the authority is immediately of God. Hence evidently this authority, considered precisely as emanating from the Author of nature by a manner of natural sequence, is not in any one person, nor in any special company of persons, whether nobles or others whatsoever of the people, because by the nature of the thing this authority is only in the commonwealth, inasmuch as it is necessary for the preservation of the same . . . that is to say, it is not immediately in any one definite person, as Adam, James, or Philip; nor again by the nature of the thing does it need to be in one single person, and the same holds with due proportion of a Senate; . . . because by dint

of natural reasoning no reason can be devised why this authority should be determined to one person, or to a fixed number of persons, short of the whole community, rather than to any other number: therefore in virtue of nature's grant, it is immediately in the commonwealth only.' [1]

[1] *Suprema potestas civilis, per se spectata, immediate quidem data est a Deo hominibus in civitatem seu perfectam communitatem politicam congregatis, non quidem ex peculiari et quasi positiva institutione vel donatione omnino distincta a productione talis naturæ, sed per naturalem consecutionem ex vi primæ creationis ejus; ideoque ex vi talis donationis non est hæc potestas in una persona, neque in peculiari congregatione multorum, sed in toto perfecto populo seu corpore communitatis: . . . quia hæc potestas politica naturalis est: quia nulla etiam interveniente supernaturali ratione aut fide, ex dictamine rationis naturalis agnosceretur hæc potestas in humana republica, ut illius conservationi et æquitati omnino necessaria: signum igitur est esse in tali communitate ut proprietatem consequentem naturam, seu creationem et naturalem ipsius institutionem. . . . Quæ consequuntur naturam, immediate dantur a proprio et immediato auctore ejusdem naturæ: sed hæc potestas est proprietas quædam consequens humanam naturam, ut in unum politicum corpus congregatam: ergo datur immediate a Deo, ut est auctor et provisor talis naturæ. . . . Nam, eo ipso quod homines in corpus unius civitatis vel reipublicæ congregantur, sine interventu alicujus creatæ voluntatis resultat in illa communitate talis potestas, cum tanta necessitate ut non possit per voluntatem humanam impediri: signum proinde est esse immediate a Deo. . . . Atque hinc etiam evidens est potestatem hanc præcise spectatam, ut est ab auctore naturæ quasi per naturalem consecutionem, non esse in una persona, neque in aliqua peculiari communitate sive optimatum sive quorumcunque ex populo, quia ex natura rei solum est hæc potestas in communitate quatenus ad illius conservationem necessaria est. . . . Id est, non est immediate in una certa persona, v.g.*

§ 61. Suarez goes on to argue that government is of natural institution and divine appointment, but not kingship: for were kingship a divine thing, the royal power would be immutable, and comprehend all the inalienable prerogatives of sovereignty, — as indeed to James I.'s mind it did; all countries would be monarchical and the succession to the throne would be everywhere the same.[1] Suarez holds the same doctrine in his treatise, *De Legibus*, where we read: "It follows that civil authority,

Adamo, Jacobo, vel Philippo: neque etiam ex natura rei postulat esse in una singulari persona, et idem est cum proportione de senatu: . . . quia ex vi rationis naturalis nulla potest excogitari ratio cur hæc potestas determinetur ad unam personam, vel ad certum numerum personarum infra totam communitatem magis quam ad alium; ergo ex vi naturalis concessionis solum est immediate in communitate (*Defensio Fidei*, III. c. ii., nn. 6, 7; cf. n. 18; also cf. *De Legibus*, III. c. iii., n. 6; c. iv., n. 2).

[1] This is the point of the remark in John Selden's *Table Talk*, "Kings are individual, this king and that king: there is no species of kings." Suarez assumes that civil authority is a constant quantity, which may be doubted, considering the historical development of that authority. Still, it is a good argument, *ad hominem*, as eliciting the real mind of the adversary. The Stuarts really seem to have held that royal authority was identical with civil authority, and was a constant quantity. Their phrase was "the inalienable prerogatives of the crown." Any concession that the king made to his subjects, *e.g.* in the Petition of Right, 1628, they regarded as a temporary indulgence, revocable at the king's pleasure. This fixed idea explains conduct in Charles I. which otherwise looks like bad faith. After all, the Stuarts did but go upon mediæval conceptions of royalty, enhanced somewhat by the Reformation, which confounded royal and papal prerogative.

so often as it is found in one man or prince, according to lawful and ordinary right, has proceeded from the people and commonwealth either proximately or remotely, and cannot be held otherwise, consistently with justice" — *a populo et communitate manasse, nec posse aliter haberi, ut justa sit.*[1]

§ 62. Suarez differs from Rousseau in making the people transfer their authority to some king or assembly, and that of necessity — they being too unwieldy a body to exercise it themselves — an irrevocable transfer, without power of resumption; whereas, to Rousseau's mind, the authority remains inalienably with the people, any king, or senate, or 'prince,' whom they elect, being the mere bailiff of the sovereign people. Also with Suarez, authority does not arise from a contract to live in civil society, but from the natural necessity of such society provided for by God. Lastly, with Rousseau, as with Locke, civil authority is the agglomera-

[1] Suarez was not the author of the doctrine of the transference of power from the people to the prince. It appears in the mediæval gloss, *Quod principi placuit legis habet vigorem, utpote cum lege regia, quæ de imperio ejus lata est, populus ei et in eum omne suum imperium et potestatem conferat.* See Dr. Gierke's *Political Theories of the Middle Age*, note 140, p. 146; and note 142, p. 147. The point that Suarez emphasised, contrary to mediæval ideas, is that the *princeps* is not necessarily a king; and again, that the transference of sovereignty need not be absolute and entire.

tion of individual powers; with Suarez it is a new creation resultant upon social union.

§ 63. Suarez's theory has had great vogue in the Catholic schools, where it has led and still leads to much disputation. The theory is admirable in the abstract. The objection to it is that it is not sufficiently historical. Suarez speaks as though the getting together of a people, and consequent development of authority, was the work of an instant. We do not profess to know how the 'horde' came together, but it takes generation upon generation to form the 'tribe,' and many more generations before the tribe assumes the full majesty of the mature State. Again, in the sentence, "by the mere fact of men being gathered together into the body of one commonwealth, authority results in that commonwealth without the intervention of any created will," hardly enough is made of the truth, which the writer well knew, that men are not gathered together into the organic unity of a commonwealth without the intervention of some very determined human will or wills; and that the will which gathers and organises is apt to rule. Still, I say, the theory is admirable in the abstract, as are the calculations of mathematicians, where they assume uniform mediums, rigid rods, identity of tem-

perature, constant barometric pressure, and generally a uniformity and persistence of conditions which is not found in nature; all the while knowing well that these assumptions are not correct, and correcting their results accordingly upon observation when they come to practice. So, having in our hands a theory formed on the hypothesis of a primitive equality, we must make the necessary corrections in applying it to the inequalities which history reveals in the constituent materials of the first commonwealths. Suarez's theory then holds good as a 'first approximation.' It holds ἐν τοῖς ὁμοίοις καὶ ἴσοις (Aristotle, *Politics*, III. 1288 *a*), in a society where every man is the peer of his neighbour. Perhaps the colonists who broke away from the British Crown under George III. came as near as ever men came to such equality among themselves. Then the history and constitution of the United States will be the best example of Suarezian theory put in practice. But, as Aristotle shows (*Politics*, III. *ad fin.*), societies frequently start from great inequality of their constituent members, one order, or house, or individual being preponderant above the rest, and engrossing the nascent political power, whether the rest will have it so or not. This leads Suarez himself to admit that in certain cases "the royal power

and the perfect community may have sprung into existence together" (*Def. Fid.*, III. ii. 19). In such cases civil authority never rested with the whole people; and, instead of the people making the king, the king made the people, much as the queen bee makes the swarm.

§ 64. It may be said for Suarez that such portion of the population as falls below the level marked as ἴσοι καὶ ὅμοιοι is really no organic portion of the State at all. Aristotle (*Politics*, III. 1278 *a*; IV. 1326 *a*) distinguishes between those who are citizens and portions of the State, and those, ἄνευ ὧν οὐ γίνεται πόλις, whose presence is indispensable, but who yet are not citizens and not members of the civil community. The Saxons were put outside the political organism by their Norman conquerors. Wamba the swineherd had no place or function there; and politically the Saxon master went for little more than the Saxon ceorl. Many empires known to history have included large subject populations that were no organic portions of the empire within which they were imbedded and encrusted and preserved. This consideration yields a narrower extension of the term 'the people.' The Suarezian concept of the primitive equality of the earliest constituents of the State becomes more applicable to the people thus viewed. On the whole,

judiciously explained and not driven home too rigidly, the Suarezian theory of the origin of civil authority appears to be as accurate as any theory can be accurate under the vast variety of circumstances that have affected that origin in history. Read by the light of history, it is an aristocratic rather than a democratic theory. Whether we consider the patriarchal society of early times, or the military constitutions which were erected upon the ruins of the Roman Empire, 'the people' with whom any bestowal of authority could rest were a select few. Not all hangers-on of a tribe were tribesmen. Not all residents in a city were citizens. When a band of warriors, led by the leader of their choice,[1] conquered a land and possessed it, they disfranchised the ancient inhabitants. They raised the man of their choice upon their

[1] The *comitatus* of Cæsar (*De Bello Gallico*, III, 22) and Tacitus (*Germania*, XIII., XIV); see Bishop Stubbs's *Constitutional History of England*, pp. 24, 25. There was much Visigothic blood in Spain; and I believe Suarez to have been not uninfluenced by this tradition of the *comitatus*, which certainly took great hold of St. Ignatius Loyola and of the Society which he founded. Cf. Mr. Jenks, *History of Politics* (pp. 71–74): "The origin of the *State* or *political society* is to be found in the development of the art of warfare. . . . A State is founded when one of these host-leaders, with his band of warriors, gets permanent control of a definite territory of considerable size." This, I think, may be called the Suarezian theory recast, in view of the history of Europe A.D. 500–1500.

shields: he led them to victory, and they made him king. The former proprietors of the soil had no more voice in the election of the monarch than they had in the revolution which overthrew their patriarchal polity, and set up in its stead the new militarism. The king, the *electus*, as he is called in the Latin coronation services, — and indeed he owed his position to the choice of his people, that is, of his warriors, — gradually found means to render the crown hereditary in his family.[1] Thus hereditary right, and even 'divine right,' sprang up in the course of generations. When Suarez wrote, the doctrine of divine right flourished exceedingly, in England, in Spain, and in France. The writings of the great Jesuit theologian recalled monarchs to *the rock whence they were hewn, and to the hole of the pit from which they were dug out* (Isa. li.): it told them that they were of the people, of the fighting-men whom their ancestors once led, and that this people had originally placed the orb and sceptre in their hands: royalty and the insignia and prerogatives of royalty were not, like Numa's *ancilia*, sent down straight from heaven. Civil authority and royal prerogative are not one in

[1] Tacitus's remark (*Germania*, VII), *reges ex nobilitate, duces ex virtute sumunt*, shows the patriarchal hereditary principle and the military elective principle working side by side.

essence: monarchy and government are not identical. The State must be, the king may be. The polity may be this or that, but there must be a polity, though there need not be a monarch.

§ 65. I pass to some consideration of T. H. Green's *Principles of Political Obligation*, and Mr. Bosanquet's *Philosophical Theory of the State*.[1] And first I note with pleasure in these works what I take to be a sounder view of freedom than obtained thirty years ago, when Mill, *On Liberty*, was in vogue. "The good will is free, not the bad will," says Green (*P. P. O.*, ed. 1895, p. 15). This does not mean that the evil will does not choose for itself and incur responsibility: it means that the evil choice makes for the subversion of the 'true self' of the chooser, a subversion which none would go about, had he not surrendered himself to some delusion: but delusion, even culpable and voluntary, makes against freedom, so far as freedom is a privilege and a thing to value. The freedom not for good — overestimated by Mill and the school of Locke — is happily described by Mr. Bosanquet as "a maximum of empty space, to be preserved against all trespassers, round every unit of the social whole" (*P. T. S.*, p. 124); and again, as "the empty hexagon

[1] I refer to them as *P. P. O.* and *P. T. S.* respectively.

round each individual" (*ib.*, p. 196); and again, "an arrangement by which, at the sacrifice of some of its activities, it (the individual) is enabled to disport itself *in vacuo* with the remainder" (*ib.*, p. 125). It is not the aim of the State to secure to each of its citizens as much of the liberty of a Robinson Crusoe as is compatible with their living together and having dealings with one another. This, on the plain ground that Robinson Crusoe represents a man under misfortune, no less under misfortune than a patient in a hospital. He is a type of anything but the normal and natural man. Normally and naturally, man is a member of the organism called the State.[1] Man out of society is in a manner a dead man, only called 'man' by courtesy.[2] The true desirable liberty of the individual, then, is that which befits him as a healthy member of the State, and enables him heartily, earnestly, and with intelligent interest to co-operate towards the common good; not that which allows him to play his pranks and approximate to the style of the

[1] Or at least dependent on the State, there being, as I have just said, following Aristotle, 'inorganic elements' in a State.

[2] "When the man as a whole is undone by death, neither foot nor hand will remain otherwise than nominally: we speak of the hand of a corpse as we might of the hand of a marble statue" (Aristotle, *Politics*, I. 1253 *a*).

"monarch of all I survey."[1] The ideal citizen is not an absolute sovereign in reduced circumstances, or a despot with his claws cut. The ideal citizen is one who has found his proper place in an organic body, and therein bends his powers to the common good. His rights are the endowments which fit him for his social position, deprived of which, not only he would be worse off, but the State would be worse off too by the loss of his public services. It follows that many rich men are not ideal citizens. It does not, however, follow that they should be deprived of their wealth: for the public good requires this indulgence, that in every class, high and low, some unfit members be tolerated. A man should not be forced by the State to do absolutely all that he ought to do. Moral duties, as such, cannot be enforced by law, because they involve dispositions. Legal compulsion, carried too far, induces atrophy of moral dispositions. Thus excessive poor-rates dry up the springs of private charity. Hence Green lays down this rule of limitation to State interference: "Those acts only should be matter of legal injunction, or prohibition, of which the performance, or omission, irrespectively of the motive from which it proceeds, is so neces-

[1] "In truth, there is no such right to do as one likes irrespective of society" (Green, *P. P. O.*, pp. 109, 110).

sary to the existence of a society, . . . that it is better for them to be done, or omitted, from that unworthy motive which consists in fear of legal consequences, than not to be done at all" (*P. P. O.*, pp. 38, 39). This maxim has to be qualified by the observation that a legal sanction sometimes develops and directs, strengthens and guides, the public conscience. Law is not always operative in the way of slavish fear. Coercion does not always supplant worthier motives. It does or it does not, according to the manner of its application and the persons to whom it is applied. Legal pressure may help the growth of a habit of spontaneous goodness, provided such goodness be recommended at the same time by other considerations proper to itself. Still, there is a danger, as Green points out, of the *legally must* suffocating the *morally ought*, a danger to be considered by Collectivists, who would abolish the upper class that now is, and the social function of the upper class, supplanting all that by a legally compelling and legally compelled bureaucracy.[1]

§ 66. In days when so many earnest-minded men differ entirely as to the scope and aim of human existence, it is a boon if we can discern

[1] The endeavour of every one in a socialist commonwealth would be to get into the bureaucracy, as now men strive to be rich. The bureaucrats would be the upper classes.

any break in the clouds of dissension and doubt, any omen of a reconciliation to be worked out perhaps in the twentieth century. It is an omen of especial interest, when the advance-guard of modern thought, of which we may consider Thomas Hill Green a standard-bearer, proclaims important conclusions in political philosophy identical with some of those advocated by that time-honoured teacher of mankind, the Catholic and Roman Church. I refer particularly to the Encyclical Letter of Leo XIII. on *Human Liberty*, issued June 20, 1888. Leo XIII. there distinguishes "physical freedom," or what Green (*P. P. O.*, p. 9) calls "self-determination simply," from "moral freedom," which Green calls "self-determination according to the true idea of self," upon which he adds, "the good will is free, not the bad," (*ib.*, pp. 9, 15). The Pope observes that, as sickness is a sign of something good, namely of life, so the fixing of the will upon unworthy objects is a sign of free will, a good thing in itself. But perfect life excludes sickness, and a perfect free will is inconsistent with unworthy choice.[1] Hereupon His Holiness quotes some

[1] Green's words (*P. P. O.*, p. 14), "Given the man and his object as he and it at any time are, there is no possibility of the will being determined except in one way," are hard to understand otherwise than as a repudiation of all that Catholic divines under-

apposite words of St. Thomas: "Everything is properly that which its nature fits it to be.[1] When, then, a thing is moved by some extrinsic and foreign cause, it does not work according to itself, or organically, but under the impression of another: such working argues a servile necessity. But man according to his nature is rational. When, then, he moves according to reason, he moves of his own proper motion and works according to himself, which argues liberty. But when he does wrong, he swerves from reason in his work; and then he may be said to be moved by another, and to be held within bounds prescribed by a foreign power; and therefore *he that doeth sin, is the servant of sin.*"[2] We have it, then, that physical freedom is the freedom which a man has by the fact of his being a man at all; moral freedom is the freedom that a man attains to by becoming the man that he ought to be.

stood by 'free will.' But the matter belongs to psychology, not to political science.

[1] Cf. the meaning of τέλος and τέλειος, and of φύσις as being the process by which a thing grows to its τέλος.

[2] *Unumquodque est illud quod convenit ei secundum naturam. Quando ergo movetur ab aliquo extraneo, non operatur secundum se, sed ab impressione alterius, quod est servile. Homo autem secundum suam naturam est rationalis. Quando ergo movetur secundum rationem, proprio motu movetur, et secundum se operatur, quod est libertatis: quando vero peccat, operatur præter rationem, et tunc movetur quasi ab alio, retentus terminis alienis: et ideo qui facit peccatum, servus est peccati* (*Joan.*, VIII. 34).

§ 67. Man's "working according to himself" would be called by Green and Mr. Bosanquet his realising his "real self." That he cannot do in isolation. True individuality, Mr. Bosanquet well says, is not isolation. The individual finds his 'real self' only as the member of a community, governed by law, — which law is the expression of the 'real will,' or right will, of that community, in view of the good of the organic whole, and of the individual as a constituent of that whole. The average individual in his ordinary moods is not to be mistaken for his 'real self.' "In order to become ourselves, we must be always becoming something which we are not" (*P. T. S.*, pp. 125–126). We must put down "the rebellion of our casual private selves" (*ib.*, p. 127); the "centre of gravity of self" must be "thrown outside" (*ib.*, p. 155), not outside however of the true self, for that would be to suffer annexation and be led into slavery. Rousseau, if he returned to this world, would marvel to see himself 'translated'[1] under the hands of Mr. Bosanquet (*P. T. S.*, pp. 144 ff.). But I find no evidence that Rousseau's eyes were ever lifted up to heights above the 'casual private self' and a numerical majority of such hap-hazard beings.

[1] "Bless thee, Bottom, bless thee, thou art translated!" (*Midsummer Night's Dream*, III. 1.)

§ 68. A reperusal, however, of the *Contrat Social* has convinced me that I have scarcely done justice to Rousseau hitherto. Jean Jacques, optimist and romanticist, sighed after an ideal State, a typically good people, or, as he said, *un peuple de dieux*, amongst whom things could not but go well *ex hypothesi*. He is optimistic and pragmatical by turns. Some things he lays down in disregard of the wickedness and folly of mankind: at other times he stands in rueful contemplation of facts as they are. The 'general will,' according to him, is the constant will of all the members of the State, together willing their common interest, willing it too without any mistake of the quarter in which that interest really lies. That cannot be called the general will, which is not guided by an enlightened judgment. *Le peuple* (ideally considered) *veut toujours le bien, mais de lui-même* (actually considered) *il ne voit pas toujours. La volonté générale est toujours droite* (when it is not right, it is not the general will), *mais le jugement qui la guide n'est pas toujours éclairé.* When a law is proposed, the real question at issue is whether the law be in conformity or not with the general will (here assumed to be fixed upon the general interest). Conformity with the general will is the precise aim of each citizen in voting for

or against the law. If he finds himself in a minority, he discovers that he has been voting unconsciously against himself, in voting against that general will in which his own will is bound up. He rejoices to have his mistake rectified, and the general will revealed and made law by the voice of the (sapient) majority. All this supposes that the citizens as a body do will the common good, and that the majority at least are wise enough to discern it. But in a corrupt State the general will is no longer the will of all. The will of all there is an aggregate of individual wills, severally seeking their private interests in the first place, and in the second place seeking the public good so far as it does not run counter to those private interests. These private strivings in opposite directions may neutralise one another: there remains as a resultant the residuary will of the general good, but how feeble that will be! Party combinations may secure a majority in the interest of party. The vote of such a majority is no longer the general will, but a private resolution: *l'avis qui l'emporte n'est qu'un avis particulier.* Thus the general will — ideally speaking, "constant, indestructible, always right" — is unrecognisable in practice. A majority vote is no indication of it. The general will may be the will of

the wise and patriotic few, against the factious and foolish multitude. The general will is, in fact, the will of the common good, whosoever's will that may be. But what partisan does not profess to be animated by the most transcendent wisdom to discern, and the purest desire to compass, the common good? There are "six Richmonds in the field," half a dozen general wills. A sovereignty so difficult to recognise cannot be admitted by the philosopher as promising a practical polity. Clear and incisive as is Rousseau's language at first reading, he is found upon closer study to be involved in that swamp of perplexity into which Mr. Bosanquet so manfully plunges to his rescue. See *Contrat Social*, l. 2, chs. 3, 6: l. 3, ch. 4: l. 4, chs. 1, 2.

§ 69. The general will, nevertheless, is a consideration of supreme importance to the statesman. It is something of a manufactured article; and he may have, nay, should have, some hand in the manufacture. The general will is distinct from the general advantage. The general will is the will of the majority of persons in the State, most influential and best capable of judging: it is the will of this enlightened majority bent upon what they take to be for the general advantage. Such a general will exists in various degrees of strength, and in

some countries scarcely at all. The objective general advantage is not a thing to insist upon imperiously when the general will runs counter to it. A lesser good that the people will take to kindly is a better good for them than a superior advantage forced down their throats. Nevertheless wrong-headed and unconscionable people must at times be saved by force.[1]

§ 70. These casual creatures Mr. Bosanquet dismisses, and sets up to reign in their stead what he calls the "Real Will," or what an ordinary person would call the 'ideal will,' or perhaps the 'interpretative will' (cf. Plato, *Republic*, I. 340), meaning what would be the will of the individual and of the multitude under ideal conditions of wisdom and goodness. All which exposition may be according to the 'real mind' of Rousseau: but, I fear, much transcends the actual mind of Jean Jacques, apparent in his writings, and read there by his admirers, the men of the French Revolution. Like Shelley, Jean Jacques was a very 'casual' mortal indeed, the sport of whims and fancies and varying moods. He was a man of genius for all that, and, like other geniuses, suggests much that his own understanding never clearly discerned.

§ 71. It may be asked, why this phrase,

[1] See Cromwell's view quoted on p. 96.

'real will'? The answer I take to be as follows. The great reality in the view of the sticklers for 'real will' is one universal consciousness, whereof actual individual minds are feeble representations. The universal consciousness discerns and desires whatever is good for the whole, and for each individual as part of the whole. No will ever desires any private good inconsistent with the good of the whole, except under some ignorance or misunderstanding.[1] Thus the appeal lies from Philip drunk to Philip sober. From drunkenness to sobriety is an advance in reality. From the particular to the universal consciousness is also, in this view, an advance in reality. So too is the transition from the private to the general will. The 'general will' is the more real of the two. Only, be it ever remembered, this general will is not necessarily the will of the majority. It is the rational will, and that may be the will of a small minority. Mr. Bosanquet and Green protest against the method of simple enumeration of heads for purposes of popular suffrage. Thus Green (*P. P. O.*, pp. 109, 110), after saying that law is the expression of a general will, contin-

[1] An assertion strongly backed by Plato, still very debatable, and involving a point of great subtlety in the theory of the freedom of the will. It is discussed by St. Thomas Aquinas, *Contra Gentiles*, III. ch. 10.

ues: "If the common interest requires it, . . . neither can its enactment by popular vote enhance, nor the absence of such vote diminish, its right to be obeyed."[1] Mr. Bosanquet would even go the length of taking for his social unit, not the actual individual, but "appercipient systems," or correlations of thought which one man shares with another.[2] Each man has his part in many such systems. Thus the head of a college, who had shares in a gold mine, and was the father of a family, would embody portions of at least three appercipient systems. The share in the franchise allotted to such a many-sided personage should be as three to one, compared with the share of a poor solitary student.[3]

§ 72. Ancient dualism and modern mon-

[1] What authority then has the popular vote?

[2] This is a curious reversion to a primitive position. "In the infancy of society . . . men were regarded . . . not as individuals, but always as members of a particular group: . . . nor was he ever regarded as *himself*, as a distinct individual" (Maine, *Ancient Law*, p. 183).

[3] In his short paper, *On the Reality of the General Will* (p. 331), Mr. Bosanquet writes: "We may identify the general will of any community with the whole working system of dominant ideas." Then the individual into whose composition a larger number of dominant ideas enter has by right a preponderant share of political power. More thought, more authority. There remains a difficulty as to how far the dominant ideas of any given epoch are likely to be rational ideas. Elsewhere (*P. T. S.*) Mr. Bosanquet has told us: "The general will must be the rational will, even though people are not aware of it."

ism, so far as they recognise a Divine Mind, both agree in constituting that mind the standard of all sound thought and wise volition, so that not the actual wills of erratic individuals, however strong a majority they make, but the will which conforms to the standard mind, so far as such conformity is ascertainable and effective, should rule the State. Without accepting Mr. Bosanquet's psychology, without being prepared to go all lengths with Hegel, I accept this somewhat conservative conclusion, that the general will which ought to be supreme is *quod major et sanior pars communitatis vult*, as the canonists say, — the rule in fact of intelligence, not of numbers. So also Leo XIII. lays down in his Encyclical of April 20, 1884.[1]

[1] *Pares inter se homines esse universos nemo dubitat, si genus et natura communis, si finis ultimus unicuique ad assequendum propositus, si ea quæ inde sponte fluunt jura et officia spectentur. At vero quia ingenia omnium paria esse non possunt, et alius ab alio distat vel animi vel corporis viribus, plurimaeque sunt morum, voluntatis, naturarum dissimilitudines, idcirco nihil est tam repugnans rationi quam una velle comprehensione omnia complecti, et illam omnibus partibus expletam æquabilitatem ad vitæ civilis instituta traducere. Quemadmodum perfectus corporis habitus ex diversorum existit junctura et compositione membrorum, quæ forma usuque differunt, compacta tamen et suis distributa locis complexionem efficiunt pulcram specie, firmam viribus, utilitate necessariam: ita in republica hominum quasi partium infinita propemodum est dissimilitudo: qui si habeantur pares arbitriumque singuli suum sequantur, species erit civitatis nulla deterior: si vero dignitatis, studiorum, artium distinctis gradibus, apte ad*

§ 73. I am less satisfied with Mr. Bosanquet's attempt to revivify Rousseau's celebrated phrase, "Each individual, uniting himself to all, shall obey none but himself" (*Contrat Social*, I. 6). Mr. Bosanquet writes (*P. T. S.*, p. 144): "The claim to obey only yourself is a claim essential to humanity; and the further significance rests upon what you mean by 'yourself.'" Let us pursue the meaning of 'yourself' under Mr. Bosanquet's guidance. From the outset it is clear that he means, not what the plain man means by the term, but something much more transcendental. He tells us (*P. T. S.*, pp. 149, 150): "The imperative claim of a will that wills itself is our own innermost nature, and we cannot throw it off. This is the ultimate root of political obligation. . . . It is such a real or rational self that writers after Rousseau have identified with the State." 'Yourself' then means 'your better self,' in fact, 'your reason': *you obey your own reason* in obeying the State. So far we are agreed: it is an elementary truth, though not much to the mind of Rousseau, who makes of civil society an arbitrary convention, not dictated by reason. Whether *you obey your own reason only* in obeying the State, is a much larger question, involving, what is not to

commune bonum conspirent, bene constitutæ civitatis imaginem referent congruentemque naturæ.

be expected here, an entire examination of the Kantian 'autonomy of reason.' The plain man will ask: Do I not also obey God? and what is the relation of my reason to God? Such questions must stand over. But I am at a loss to understand how my "real or rational self" is "identified with the State," as Mr. Bosanquet has already told me; and again he speaks (*P. T. S.*, p. 154) of "the identification of the State with the real will of the individual in which he wills his nature as a rational being; in which identification we find the only true account of political obligation." This is a great saying, and very much to our purpose, if it be true. But it is also a hard saying. Are 'the State' and 'the real or rational will of the individual' convertible terms? Is it then impossible for the real or rational will of the individual to disapprove of the policy of the State? I should say, moreover, that the real or rational will of the individual extends to many things in heaven and on earth which are not comprised in the State. The State is of the temporal order, but man has eternal interests. Even in this world man has domestic interests in the bosom of his own family, and intellectual interests within the *arcanum* of his own thoughts: to call these 'political interests' would be, not an enlargement, but a

distortion of view.[1] There is more than the citizen in the individual man. Man, adequately considered, cannot be regarded as standing to the State in the mere relation of a part to the whole.[2]

§ 74. Further, I am at a loss to understand what State Mr. Bosanquet has in mind. He can never have meant to identify any and every State known to history with the real and better self of the individuals composing it, — France, for instance, under Louis XV., or Austria under Joseph II. He must distinguish 'the State' from any actual bad government that may have gained the upper hand. But remove the government, and where is the State? There is no longer any tangible body left to philosophise upon. Even a whole

[1] Mr. Bosanquet, I feel sure, would not call them 'political interests.'

[2] "Man is not subservient to the civil community to the extent of his whole self, all that he is and all that he has." — *homo non refertur ad communitatem politicam secundum se totum et secundum omnia sua* (St. Thomas, *Summa*, I–II. q. 21, art. 4, ad 3). This I take to be a very pregnant saying. It cannot be denied that the best work of the artist, of the mathematician, of the philosopher, — not to say of the saint, — is done without any conscious reference to civil society and away from civil control. Even allowing, with the first French Revolution, that the two terms, 'man' and 'citizen,' have the same *extension*, or (as Mill says) *denotation*, yet we must add that greater is the *intension*, or *connotation*, of 'man' than of 'citizen.' Rousseau (*Contrat Social*, l. 2, ch. 4) comes very near to admitting this.

people may have become corrupt, as probably the people of Constantinople were corrupted before their city finally succumbed to the Moslem. How shall any one find his real will, his better self, in the whims and caprices of a corrupt multitude! Phocion evidently saw no reflection of his better self in the mind of the *Ecclesia* at Athens. We have as much reason to be on our guard against the 'casual State,' and against 'the average people in its ordinary moods,' as against "our casual private selves," and against "the average individual in his ordinary moods," who, Mr. Bosanquet warns us (*P. T. S.*, pp. 125, 127), "is not to be taken as the real self." We are referred for "the real will of the individual," or "the real self," to "the State," — evidently 'the real State,' which will be found *non in fæce Romuli, sed in republica Platonis*, and is, I fear, as visionary a thing as the Republic of Plato.

§ 75. Plato's words at the end of the ninth book are apposite: "You mean, in the city whose constitution we have just drawn out, the theoretical city (τῇ ἐν λόγοις κειμένῃ), for surely I ween it exists nowhere on earth. Well, said I, in heaven possibly it is exposed to view as a model for any one who wishes to see, and seeing to settle himself there" (*Rep.* IX. 592). The 'real will' is simply the

'rational will,' and the 'real State' the 'rational State,' the ideal after which we ought continually to strive, and which we shall never perfectly attain. Meanwhile it is our duty to submit to civil authority, imperfect and more or less irrational as such authority actually is on earth. To wait for the 'real' or perfectly rational will, and deny obedience to any authority short of that, would be to live in chronic insurrection. The 'real will' is to be promoted, the 'real State' looked for as a kingdom to come: but the imperfect *powers that be* claim our present actual obedience. Thus far, — and practice hardly goes any farther, — I trust I am in agreement with Mr. Bosanquet, widely as our theories differ.

§ 76. Or will any one venture to affirm that he obeys himself, his real and better self, by obeying the behests of the State that he lives in, whatever they be? Such a one will rank with those who *are ready to raise up Leviathan*,[1] to fall in with the worship of

[1] *Parati sunt suscitare Leviathan* (Job iii. 8, Vulgate). I do not wish to couple Mr. Bosanquet's name with Leviathan and *Dea Roma*. The State which he has in view I take to be an academic entity, consisting of the dominant thought of the age, which ought to control the doings of the age, and in the end commonly succeeds in controlling them. Am I wrong in my further conjecture of Mr. Bosanquet's position? — that he agrees with Auguste Comte in considering the dominant thought of each

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Dea Roma, the apotheosis of emperors, the canonisation of the Vicar of Bray, and the uncanonising of all martyrs. A clear point of political wisdom it is, in view of the maintenance of the State, not to exaggerate civil authority. There is a nemesis of reaction against all overstrained and overvaunted power. As we love and cherish the State; as we recognise it, with Aristotle, for the highest and best of all human institutions; as we hold the disruption of the State, and the local wreck of any civil society, to be a calamity worse than famine and pestilence; as we confess that the Church presupposes the State,[1] coexists with the State, and perishes locally wherever civil anarchy ensues, — we must, in the State's own interest, insist on the essential limitations of civil authority. The most obedient subjects are they who do not profess to be ready to obey

successive age to be right for that age; or, in terms of another philosophy, takes the educated public opinion of the day to represent such expression as the universal consciousness so far has found for itself, though not all that it will find. I would add this remark in taking leave of the general will. The general will of an educated community is *auctoritas*, not *potestas:* it becomes *potestas* only as organised in definite constitutional forms.

[1] A Christian cannot remain a savage. Witness the Jesuit Reductions in Paraguay, and the efforts of all missionaries to convert and civilise together. Only, I observe, neither civilisation nor sanctity either involves of necessity the wearing of European clothes.

the State in all things. A firm *No* carries a hearty *Yes*. As in extreme cases they will *obey God rather than man* (Acts iv. 19), so in all ordinary circumstances they will be *subject for conscience' sake* (Rom. xiii. 5). They bear much even of hard ruling, because they discern, at the back of the State, a Power higher than any State. We must beware of weakening those delicate springs of religion and conscience upon which the State is borne. Political obligation is a moral obligation. Morality goes deeper than politics. And the moral law is something else than the registered determination of king and people.

§ 77. Rights which the civil power cannot ignore or set aside beget a duty in that power to respect them, and every duty is a limitation. The civil power also has its rights. This leads to some consideration of the nature of 'a right.' First, then, a right is only possessed by one who has a rational will to hold it against trespassers. Inasmuch as they have no rational will, dumb animals have strictly no rights, nor does the law of any country recognise rights in them. The will of idiots and of infants is said to be 'radically' rational, a sufficient basis for some possession of rights, not, however, such full possession as grown men of sane mind have. The adage, *volenti non fit injuria*, might be expanded

into *non fit injuria nisi nolenti*. Secondly, as rights are against other persons, that is, against other rational wills, it follows that a man's rights are dormant where he comes into contact with no other persons. No man has rights against himself: no man can do himself a wrong,[1] or complain of injustice suffered at his own hand. The rights of Robinson Crusoe slept on his desert island till he found his man Friday. But, as I have argued already, by nature all men either are citizens or are in the way of becoming such: all men are naturally either actual or potential citizens. In the phraseology of the Schoolmen, if we consider a man's *terminus a quo*, he has the germ of civil life in him; if we consider him arrived at his *terminus ad quem*, he lives a full and perfect citizen.[2] The φύσις, or process of his natural development, would be arrested, and violence would be done to him, if he were stopped in his progress from the former term to the latter. Only in

[1] A man, however, may do what is wrong to himself, or even to a dumb animal.

[2] "'Nature,'" it has well been said, "is used for what you start with, and it is used for what you want to get to." In the 'state of nature,' considered as a *terminus a quo*, there was no mature *civitas*, nor aught else mature, but there was a rudimentary *civitas* with germinal capacity of development. That development was effected by human acts, natural, not arbitrary, acts.

the *terminus ad quem* is his nature complete, and therefore it is not the initial, but the final stage of human development that properly represents the natural state of man. Fallen from this state, bereft of citizenship, a man was well styled by the Roman jurists *capite diminutus*, — as it were, a headless trunk of a man, the superior and better part of his nature being lopped off.[1] Two individuals, like Robinson Crusoe and Friday, isolated from the rest of the world, unassociated by any ties of domestic, tribal, or political community, are in an unnatural state: it is not in them that we can study rights. They have, indeed, certain primary rights, as that one should not kill and eat the other. But they have over them on earth no judge of right, no avenger of wrong. Their rights are as the relations that lie between them, few and simple. In a formed society relations spring up and rights multiply, complicated, intricate, needing much determination and adjustment: so rights grow with the growth of the family and of the village community and

[1] We often hear — and this is said to be the truth latent at the bottom of Hobbes's grim philosophy — that, apart from society, there would be no morality. Yes, but apart from society man would not be man. A 'rational animal' means a social animal. The three adjectives, *social*, *rational*, *natural* (not *physical*) may often be interchanged. The same obligation is social, rational, and natural, as you consider it.

of the State. Under these explanations I agree in the main with the following remarks of Green. A right, he says, is "a claim of an individual, arising out of his rational nature, to the free exercise of some faculty," and also "a concession of that claim by society." "Rights have no being except in a society of men recognising each other as ἴσοι καὶ ὅμοιοι; they are constituted by that mutual recognition" (*P. P. O.* p. 144). "No rights antecedent to society." "No right without a consciousness of common interest" (*ib.*, p. 48). "Rights do not begin till duties begin . . . only by the recognition by certain men of a common interest" (*ib.*, p. 124). "A State presupposes other forms of community with the rights that arise out of them, and only exists as sustaining, securing, and completing them" (*ib.*, p. 139). "The State . . . does not create rights, but gives fuller reality to rights already existing" (*ib.*, p. 138). "Rights are not arbitrary creations of law; . . . certain powers ought to be secured as rights; . . . no rights antecedent to society, none that men brought with them into a society which they contracted to form. . . . They (rights) are 'natural' in the sense in which, according to Aristotle, the State is 'natural'" (*ib.*, p. 47). "A right is a power claimed and recognised as contributory to a common good" (*ib.*, p. 109). And, more elaborately, "a right is a power of

which the exercise by some individual, or by some body of men, is recognised by a society, either as itself directly essential to a common good, or as conferred by an authority of which the maintenance is so essential" (*ib.*, p. 113). "The State . . . presupposes rights, and is an institution for their maintenance, not, however, the rights of individuals irrespective of others, but as members of a society of free agents" (*ib.*, p. 143). "A right to act unsocially is a contradiction" (*ib.*, pp. 143–144). To which I would add that 'a right irrespective of others' is a contradiction. Every human right is a claim to be respected by other men, and is a limited thing, the limitations being the rights or claims to be respected, which other men, your fellows, have upon you in that matter. A right is a transaction of *give* and *take*. "It is on the relation to a society, to other men recognising a common good, that the individual's rights depend, as much as the gravity of the body depends on relations to other bodies. . . . A right against society, in distinction to a right to be treated as a member of society, is a contradiction in terms" (*ib.*, p. 109). That is to say, there is no right to break away from human society and renounce its claims upon you.[1]

[1] A principle which the Fathers of the Church applied to monks and even to hermits. St. John Chrysostom is full of the

Spinoza and Hobbes fell into what Green characterises as the common error of their time, "admitting right in an individual apart from his life in society, the members of which have a correlative claim on one another as all conspiring to a common end." On the contrary, says Green, "the individual is what he is," and has the rights which he has, "in virtue of a function which he has to fulfil in view of the society to which he belongs" (*ib.*, p. 56). This he calls a "teleological" view of rights. Rights in this view are a sort of elbow-room, claimed by the individual, and allowed by society, in order to his rendering free service toward the realisation of a certain end, — the ultimate end of man and of human society, and the fulfilment of man's "vocation as a moral being," namely, "effectual self-devotion to the work of developing the perfect character in himself and others" (*ib.*, p. 41).

praises of monks: at the same time he tells them (in his Homily on St. Philogonius) that unless the Church is to be the better for their co-operation, all the austerity of their life is thrown away. Monasticism is conspicuous in history as a great social factor. As for hermits, very few of them lived in absolute solitude. Theodoret, a familiar friend of the hermits of Syria, shows, in his *Historia Religiosa*, how they attained to local celebrity and drew crowds to their cells. The English *ancre*, or anchoress, lived in the churchyard, and gave audience to the congregation on Sundays. The *Ancren Rewle* warns her against becoming a babbling ancre.'

What Green calls the "perfect character," Professor Stewart (*Notes on Nicomachean Ethics*, I. p. 96) calls the "orderly and beautiful life," and ranks it with the Platonic Idea of the Good (*Rep.* VI. 505 ff.). So Mr. Bosanquet (*P. T. S.* p. 203); "the system of rights may be described as the organic whole of the outward conditions necessary to the rational life." Upon all which I would suggest, in a tentative way, and merely as a thing to consider, the following description: A right is a social endowment, which a man possesses as a member of some society, to enable him to co-operate intelligently, and not merely mechanically, towards the end and aim of that society.[1]

§ 78. Rights after all are but "outward conditions" to the end for which man and human society finally exist. State compulsion, which secures a man in his rights and presses upon him his social duties, is no more than a "hinderance of hinderances," as Mr. Bosanquet calls it (*P. T. S.* p. 191), rendering the Schoolmen's phrase, *removens prohibens*. Secured in his own rights, and prevented from thwarting the

[1] The primitive view, then, was correct, so far as it went, that rights and duties are tribal. Its defect was its failing to recognise a wider social union, binding tribe to tribe, and man, as such, to man. Theologically, this widening of society reflects the difference between monotheism and polytheism, or again between Catholicism and nationalism.

rights of his fellows, a man may run with limbs free, and a fair field before him, to the goal of the "perfect character" and of the "orderly and beautiful life." He will have to run, he is not yet arrived there. No State compulsion and no State protection can make a good man of him. The State removes certain obstacles, and affords certain facilities of environment, but goodness must come of the inner workings of a man's own heart, which no magistrate can touch.

§ 79. "The State," writes Mr. Bosanquet (*P. T. S.* p. 150), "includes the entire hierarchy of institutions by which life is determined, from the family to the trade, and from the trade to . . . the University."[1] And Green (*P. P. O.* p. 146), "The other forms of community which precede and are independent of the formation of the State do not continue to exist outside it, nor yet are they independent of it; . . . they are carried on into it."[2] The State is the aggregate of all these human and temporal societies; and more than the aggregate, it is the organic unity of them all. In it they have their civil being. The State, thus amplified, is a very much wider thing than 'government.' The individual does not belong for all his tem-

[1] Mr. Bosanquet says, "to the Church and the University."

[2] Much as the life of the 'cell' is carried on into the body.

poral estate to government: he is never a mere government official: he is essentially something more than an organ of the executive. Nor is the family a government department, nor the *res familiaris* a driblet of the *aerarium*. Private life and domestic life are only in part subservient to political life. Both domestic and political life are ultimately ministerial to the private life of the soul, of the thoughts, speculations, and affections. Citizenship is meant to help us towards being more thoroughly men. The inner life of the soul in man is more valid and real than the outer life of external behaviour and public duty, not that the two lives can ever be divorced. But in the region of the external and temporal order there is nothing so noble as the State. Bad government abases the sense of nobility in a people. *Vide, Domine, et considera, quoniam facta sum vilis*, is one of the Lamentations of Jerusalem under oppression (Lam. i. 11).

§ 80. While a certain separation of States will be always necessary, and mutual competition, and even jealousy, — a separation and jealousy, however, which may come in time to be rather of races than of States, — we are progressing and shall progress, unless war throws us back, towards a commonwealth of civilised mankind. The organisation of the earth is a

nobler work than the organisation of any one State, and a better good both 'in itself' and 'to us'. It is well to 'adorn our Sparta,' because it is ours, and our first duty is to the land of our birth; but our human sympathies are not to be bounded by mountain ranges or oceans. Man's blood calls for man's love, be the containing walls white, brown, yellow, or black. The perfect State and the commonwealth of perfect States are ideals not to lose sight of. Far away as they seem, in them only can the perfection of humanity on earth ever be realised. All the world over, such aims as these stand out to unite in a common effort the good wills of men of all nations and creeds, — the decent housing of the poor; the regulation of the liquor traffic in the best interest of the consumer; sanitary reform; the conciliation of labour with capital; the protection of children and innocence; the discipline of youth after leaving school; the suppression of usury and commercial frauds and anarchical conspiracy and slavery. To these ends may Great Britain and America join their forces and lead the world! Logic and metaphysics are not our strong points, — Hegel complained that the English periodical, *Annals of Philosophy*, treated of the construction of fireplaces, — but, a French writer has remarked it, every Englishman you

meet is a political philosopher. Nowhere has the union of liberty and law been better understood than in this country. We are studious of statecraft, and over every sea and land we wander, giving and receiving lessons in government. With one or two exceptions, governments generally have gathered experience in the nineteenth century, and are wiser now than they were at the Peace of Amiens.

§ 81. "Neither the State, however, nor the idea of humanity, nor the interests of mankind, are the last word of theory," says Mr. Bosanquet (*P. T. S.* p. 332). I repeat it, when the State has done its best for humanity, more remains to do. The perfect working of the State can do no more than raise the individual to a platform where he shall be able, unimpeded, to develop for himself the intellectual and spiritual side of his nature, and to aid the like development of his fellow-men. Man is not a political animal all over (§ 73, note), nor are politics and economics the sum of human interests. By virtue of the spirit that is in him, man belongs to a higher order, and is referable to a higher society, than the civil and political. The State is not a union of souls. The State belongs to the visible, temporal, and material order. Souls are immortal, States are mortal. 'In a fine frenzy' the Platonic Socrates pours

out his complaint against statesmen like Themistocles and Cimon and Pericles, that "without provision for self-control and justice, they have pestered the city with harbours and dockyards and fortifications and tribute-moneys and the like trash" (*Gorgias*, 519 A). With Plato's φλυαριῶν we may compare St. Paul's σκύβαλα (*Phil.* iii. 8). Both terms are employed comparatively, not absolutely. St. Paul was not the man to cry down a Jewish education (cf. Acts xxii. 3), nor Plato the provisions for national defence.[1] But they looked beyond these things to things immeasurably nobler. Justice and self-control are more germane to man, and touch him nearer, than the material securities of empire.[2] The State sets store by justice, fortitude, self-control, and other virtues, but on public grounds rather than for their intrinsic worth. Intrinsically these virtues are perfections of the soul that is endowed with them: they are good things in themselves. But the State values them as means to the order and prosperity of the commonwealth: consequently the statesman's solicitude is for

[1] Dockyards and city walls he was too φιλολάκων ever to appreciate (*Laws*, IV. 704; VI. 778 D).

[2] Plato, or the author of the *First Alcibiades* (134 B), explains Plato: "It is not walls, then, or ships of war, or arsenals, that cities need for their prosperity, nor population, nor size, without virtue."

the outward act of the virtue, not for those inward dispositions which alone make the act truly virtuous. He apprizes virtues politically, not ethically. Ethics go beyond politics, and there is that in man which even goes beyond ethics. Still, Plato was right in maintaining that virtue, even on the mere political aspect, is nobler and of more consequence than dock-yards and tribute money. Alexander found tribute money enough and to spare in the coffers of Darius Nothus.

§ 82. The Greek mind was imbued with the maxim that it is the business of the State to make the citizens virtuous. Aristotle (*Politics*, III. 1280 *b*) assigns this as one distinctive feature of a State, πόλις, marking it off from a military confederacy, or συμμαχία, that the State enforces a standard of virtue: "the State, rightly so called, must make virtue its care." The maxim is misleading to us, because neither 'State' nor 'virtue,' in our common speech, means exactly what πόλις or ἀρετή meant to the Greek. With us, Church and State, and again State and parish, and again State and public opinion, make three pairs of different things. They were all one at Sicyon and Megara, and even at Athens. These City States knew their citizens individually, and influenced them as Parliament never influences us. There is an

amusingly parochial air about Greek political proceedings. The restrictions on the size of Aristotle's model city (*Politics*, IV. 4) — it was to be εὐσύνοπτος, like the old grey Oxford; and its citizens not too numerous to stand within earshot of one herald, and him no Stentor, — are laughable and childish till we remember that this sovereign city was likewise the parish.[1] Then for the Greek conception of virtue, — ἀρετή, — it was originally a physical excellence, the quality of one who is 'a good man of his hands.' Of the two ideas, rectitude and

[1] Local government, could they have entered into it, might have preserved to the Athenians their empire, as representative government might have prolonged republican institutions in Rome. The Romans early mastered the grand political art of respecting the municipal privileges and local institutions of the cities which they conquered and annexed. An Athenian in the days of Trajan would have told you that Athens was still free and autonomous: did not the *Ecclesia* still meet? were there not archons and dicasts as in the days of Pericles? Athens, however, was treated with greater consideration than other cities. The exchange of letters between Pliny and Trajan reveals a habit of centralisation and autocracy which grew with the principate. Still, the provincial cities appear to have been happy under it. They were not plundered, one great negative attribute of good government. They enjoyed the splendour and prosperity of which Rome was the centre and Roman rule the guarantee. We must remember that when the people (as distinguished from the politicians) are discontented, it is usually on social rather than on political grounds. An impoverished nation blames the government. We have not to sail far from English shores to see an example. Remedy their poverty, and you will remedy their discontent.

efficiency, the latter made up the greater part of what a Greek meant by 'virtue.' Thus there were intellectual 'virtues,' for instance, 'art.' The σώφρων was virtuous, because he had himself in hand for all occasions of work: the ἀκόλαστος was vicious, because he was thoroughly unreliable and good for nothing. The maxim then really meant this, that it should be the care of the laws, and of the parish council, and of the beadles, and of public opinion as voiced by public speakers, and of ministers of the State religion, in the Greek city, to render the citizens the most efficient possible guardians of their city. So interpreted, the maxim will be accepted without discussion.[1]

§ 83. This interpretation throws light on Aristotle's saying (*Politics*, III. 1277), that in a citizen of the higher and ruling class the measure of virtue of the good man and of the good citizen is one and the same. Aristotle merely means that, to manage the affairs of

[1] There is one virtue which no Greek government ever contemplated teaching its citizens either by word or example, the virtue of truthfulness. Plato's inculcation of official lying, as though untruthfulness could ever remain a government monopoly (*Rep.*, 389 B, C; 459 C, D), — as though the proverb did not hold, *A bove majori discit arare minor*, — is one of the weak points of the *Republic* neglected in Aristotle's criticism. Truthfulness, over and above observance of civil contracts and sworn evidence in court, is a good instance of a social virtue being matter of public opinion, not of civil authority.

State in a position of great trust, a man must be thoroughly competent and efficient in the affairs of private life: the measure of his public and private capacity must be alike full. The philosopher had doubtless in his mind the Greek proverb, "Office will prove a man." High office in the State calls for a display of courage, of perseverance, of forbearance, and of the virtues of the practical intellect. It is also desirable that the civil ruler should not be morally a bad man, cruel, rapacious, or licentious. Wickedness is the undoing of princes, permeating through all their conduct, public as well as private, tainting their patriotism and marring their policy. Still, we must say, mere removal from the ranks of the wicked does not place a man on the high level of the perfectly virtuous. Nor are those virtues the most indispensable in the ruler which most perfect man as man. More important for political purposes is the ruler's being experienced and prudent, resourceful and unflinching, and even his being of robust bodily frame and capable of protracted toil, than his personal piety and meekness, or his invariable sobriety and chastity. Cromwell was more fit to sit on a throne than Henry VI. There would have been no Wars of the Roses, had an Oliver Cromwell succeeded the victor of Agincourt.

We want a statesman rather than a saint to govern us, a king in preference to a philosopher, though if kings could become philosophers without loss of kingcraft, and statesmen, remaining statesmen, could be advanced to holiness, that combination, Plato said (*Rep.* V. 473 D), would be a radical cure for the miseries of earth, — rather much to expect.

§ 84. St. Thomas Aquinas (*Summa*, II–II. q. 161. art. 1, ad. 4), accounting for the omission of humility from the list of Aristotelian virtues, writes: "The philosopher intended to treat of virtues according as they are referred to the end of civil life: . . . but humility, as it is a special virtue, particularly refers to the subjection of man to God." This may be admitted. But it would not be true to say that Aristotle had no conception of virtues except "as they are referred to the end of civil life"; in other words, that the only virtue which Aristotle cared to discuss was virtue in its social aspect, as it is the care of the politician. There is a very clear distinction, both in Aristotle and Plato, between social and philosophic virtue. The distinction led to great results in the history of philosophy. Social virtue, πολιτικὴ ἀρετή, is motived by law and custom, by a sense of shame (αἰδώς) and feeling of good fellowship (φιλία). Philosophic

virtue is formed upon the internal standard of λόγος ὀρθός. I may refer to Aristotle, *Nic. Eth.* III. 1116 *a*, 15 *ff.*; X. 1177, 1178; Plato, *Phædo*, 82 B; *Rep.* 619 C; *Timæus*, 90 C. I have said in effect several times already that philosophic virtue is not the direct aim or result of any exercise of civil authority. Motives and dispositions elude the magistrate. Philosophic speculation is none of his procuring, nor art, nor literature,[1] neither is inward rectitude of purpose. Even of exterior and overt acts the State can enforce but few, where there is question of domestic virtue and of private and personal virtue. He is far from being a good father, or a good husband, who obeys the bare letter of the most minutiose laws that can possibly be imposed to regulate his relations with his wife and children. He is not a temperate man, who eats and drinks and otherwise indulges himself as much as the policeman will allow. He is not a generous man, who pays rates and will not further subscribe. The virtue whereby man worships God, the virtue of religion, is above all things else a thing of the heart, where no compulsion can enter; and it blossoms forth into many outward acts of reverence and devotion, over

[1] "We have no literature: it is the fault of the Minister of the Interior," wrote Napoleon from camp.

which the State functionary would make a foolish figure as master of ceremonies. Public opinion reaches farther than legislation and the executive power: but even public opinion does not penetrate far into the privacy of domestic life, where much virtue should dwell. I conclude that "society was never meant to be the principal means by which the perfection of the individual was secured, but only the condition without which that perfection would be impossible" (Woolsey, *Political Science*, I. 4).[1]

§ 85. Aristotle tells us (*Politics*, II. 1263 *b*) that a city must be made virtuous "by customs and philosophy and laws." Laws, and in some sort customs, are functions of the State: but philosophy is a different power entirely. This is an admission on Aristotle's part of the insufficiency of the civil authority by itself for the task of making the citizens virtuous in the higher sense of the term. He never took philosophy for a function of the State. He would have resented, as an interference of the human with the divine, any attempt of the Ecclesia to regulate the discussions at the Lyceum.[2] Formally, the phi-

[1] Here I am in thorough accord with Mr. Newman, *Politics of Aristotle*, Introduction, Vol. I. pp. 77, 78, ed. 1887.

[2] He might have quoted from Plato (*Rep.* VI. 492 E): "As the proverb says, let us leave the element of Divinity out of the reckoning."

losopher is distinct from the statesman; and this formal distinction led, in Greek and Roman history, to an actual separation and opposition, and almost a quarrel. We can trace it all the way from Socrates to Plotinus. Socrates assured his judges that the restraining voice which he had heard from childhood had always kept him out of politics.[1] Plato took no part in Athenian politics, which he looked upon with disgust, ὑπὸ τειχίον ἀποστάς,[2] and wrote of, almost in the language of Alcibiades at Sparta, as περὶ ὁμολογουμένης ἀνοίας (Thucydides, VI. 89). Still, he held stoutly that the philosopher could save the State, if he were allowed (μετὰ τῶν ἰδίων καὶ κοινὰ σώσει, *Rep.* VI. 497 A), and should be forward to do so (*Rep.* VII. 519 C, D, E;

[1] *Apol.* 31 D *sq.*, where he says: "Whoever really means to be a champion of righteousness, if he is to survive an hour, must live retired in private life and keep out of politics." Bishop Magee of Peterborough some years ago startled people with the paradox that a State could not be conducted on Christian principles for a week. It is well at least that some representatives of Christian principles should stand aloof from Montagues and Capulets.

[2] From the celebrated passage, *Rep.* VI. 496 C, D, E: cf. the description of Athenian democracy, *Rep.* VI. 492 B, C: VIII. 557, 558, 563. *Best of bad governments* (*Statesman*, 303 A, B) is all the praise that Plato can find for the government of his native city. Neither Plato nor Xenophon seems ever to have forgiven Athens for the death of Socrates. Did either of them ever reflect how impossible the whole Socratic school would have been in the city of their predilection, Sparta?

520). Plato exerted himself for this purpose at Syracuse, and failed, unless we can suppose his example and precepts to have influenced Timoleon. To Aristotle, the question of the philosopher engaging in politics was purely speculative. Born at Stagira, he may have not enjoyed the citizenship of Athens, where he lived; and besides, the sword of Philip and Alexander soon cut off all that was vital from the deliberations of the Athenian Ecclesia. In his *Politics*, IV. 1324 *a*, Aristotle definitely asks whether the life of the statesman or that of the philosopher is preferable.[1] He answers that the active life is decidedly preferable, but adds that the philosopher is as active as the statesman, indeed that his is the better activity of the two. The philosopher, to Aristotle, was the flower of the State. The State was the plant, born to produce the philosopher and to maintain him.[2] The flower cannot cut

[1] πότερον ὁ πολιτικὸς καὶ πρακτικὸς βίος αἱρετός, ἢ μᾶλλον ὁ πάντων τῶν ἐκτὸς ἀπολελυμένος, οἷον θεωρητικός τις, ὃν μόνον τινές φασιν εἶναι φιλόσοφον. The question is neatly stated by Plato, *Gorgias*, 500 C, and became a commonplace in the rhetorical schools, whether the philosopher should engage in politics, πότερον πολιτευτέον τῷ φιλοσόφῳ.

[2] In true Aristotelian spirit Professor Stewart writes (*Notes on Nicomachean Ethics*, Vol. I. p. 19): "The final cause of civilisation, as developed through the stages of οἰκία and κώμη, is the production of the small band of thinkers, who, when the stage of the πόλις has been reached, illuminate each generation." Cf. St.

itself off from the stem. And Aristotle would have his philosopher no recluse. He would not have him cut off from social and political life, — or in our days from details of local government, 'parks and gas.' But he counted him happiest in his quiet moments of contemplation.[1] Under the rule of the generals who succeeded Alexander, and again under Roman rule, militarism quite excluded philosophy from the conduct of the State. A Marcus Aurelius was the rare exception. The philosophers dwelt in a commonwealth of thought apart. Sometimes they found a patron in a Ptolemy Philadelphus, and the other Ptolemies, founders and supporters of the Museum at

Paul, 2 Tim. ii. 10, *πάντα διὰ τοὺς ἐκλεκτούς*, howbeit St. Paul's elect were not exactly *thinkers* (1 Cor. i. 26, 27). The sentiment is twice repeated in the Platonic *Epinomis*, *οὔ φημι εἶναι δυνατὸν ἀνθρώποις μακαρίοις τε καὶ εὐδαίμοσι γενέσθαι πλὴν ὀλίγων* (973 C, 992 C). *Humanum paucis vivit genus* are words placed by the Stoic Lucan on the lips of Cæsar (*Pharsalia*, V. 343).

[1] Not without some reminiscence, I think, of a former Christ Church statesman, Professor Stewart writes (*Nic. Eth.* I. p. 96) of one who "enjoys moments of inward philosophical *σχολὴ* in the course of his 'political' career." He adds, "Perhaps the *θεωρητικὸς βίος* is most successfully realised, not as a separate life, but as the form of the *πολιτικὸς βίος*." Even in Christian asceticism there is an antithesis of the 'active' to the 'contemplative' life. See St. Thomas Aquinas, *Summa*, II–II. q. 182, in my *Aquinas Ethicus*, Vol. II. pp. 386–390. The two lives are not irreconcilable, and the latter might very happily be called 'the form' of the former.

Alexandria. They succeeded in converting Athens into a university town. At Rome, under the early emperors, philosophy of the Stoic type formed itself into a speculative opposition to the palace; and under Nero it even gave birth to a conspiracy, the abortive attempt of Piso. But the common consent of mankind marked off the philosopher from the man of the world. The favourite butt of Lucian's satire is the impotence, imbecility, and quackery, or what he took to be such, of philosophers.[1] His jibes furnish evidence of philosophy existing as a distinct profession, — ἡ διατριβή it was called, — under the Roman Empire. The antithesis of the philosopher to the statesman — as it were, of the spiritual to the temporal side of human nature — foreshadowed the great historical antithesis of Church and State which began with the establishment of Christianity.

§ 86. When Christianity first stood forth to the gaze of Græco-Roman civilisation, and was asked its name, the new comer answered boldly: 'I am a philosophy.' It was not exactly a philosophy either: but that name better than any other declared to the Hellenised mind what Christianity really was, *βίον*

[1] Great families in Lucian's day kept a philosopher, as in the days of our grandfathers they kept a chaplain.

ἀμείνω τοῦ πολιτικοῦ (*Rep.* 521 B). It was tantamount to saying: 'I am a Higher Life, I am a Spiritual Power.'[1] Christianity took up at once three salient traditions that it found in the Gentile world: the tradition of Philosophy, the tradition of Mysteries, and the tradition of Roman Law. With philosophy, it promised even on earth "a life above the level of man (κρείττων ἢ κατ' ἄνθρωπον), a life that man shall not live as man, but only inasmuch as there enters into the composition of his being a divine element" (Aristotle, *Nic. Eth. X.* 1177 *b*). The said element was, not his intelligence, as Aristotle had supposed, but his membership and participation with Christ (1 Cor. vi. 15; xii. 29: Eph. v. 30), or what is called by Catholic divines 'the supernatural life.' Christianity had its mysteries also, beginning with the 'initiation' of baptism. The baptized were ready with the cry that was in the mouths of the initiated at Athens in Demosthenes' day

[1] In the pages of the Greek Fathers φιλοσοφία frequently stands for Christian life and practice, *e.g.* in St. John Chrysostom, Homily 4, *ad Philipp.* — "the great and philosophic soul, . . . such was the soul of Paul: it had occupied an eminence higher than any other, the high ground of spiritual philosophy, the true philosophy"; and Homily 6, *in 1 Thess.*, "nothing will be difficult to us, if we will play the philosopher." Had not Plato said: "Greater good than philosophy never hath come, nor ever shall come, God-given, to mortal race"? (*Timæus*, 47 A, B).

(*De corona*, n. 259), ἔφυγον κακόν, ηὗρον ἄμεινον. Baptism was to them the entrance into the higher life, called *newness of life* (Rom. vi. 4). This life was to continue beyond the grave: indeed, its fruit and best enjoyment were there. In the *Panegyric* of Isocrates we read the praise of the Eleusinian Mysteries, how they opened to men a nobler life here and good hope for hereafter. The initiated in those mysteries looked forward beyond death to life everlasting in the company of the gods (Plato, *Phædo*, 81 A). To these vague longings of Hellenism, Christianity imparted definiteness and assurance, pointing for the argument of the higher life to the Incarnation, and for the argument of the life enduring beyond the grave to the Resurrection of the Saviour. To put in one word this 'higher life' of Christianity, I should say that Christianity inspired 'holiness,' as something over and above 'goodness.' Civil authority is exerted on behalf of political goodness, or (in Aristotelian phrase) 'general justice.' No one has ever dreamt of saying that the formal object of the exercise of civil authority is to make men holy.[1]

§ 87. Not content with setting up a high ideal of life and encouraging aspirations after immor-

[1] See the section, "Of the Scope and Aim of Civil Government," in my *Ethics and Natural Law*, pp. 354–357, nn. 1, 2, 3.

tality, Christianity undertook a task which no school of philosophy had undertaken, except in some small measure the Pythagorean Brotherhood. It developed a government analogous to that of the Roman Empire, making of bishops its spiritual proconsuls, and fixing in Rome itself the centre of a world-wide spiritual authority. It declared itself a spiritual kingdom, a polity of positive divine institution in the supernatural order.[1] It clothed its ordinances in the forms of Roman law, till there came to be recognised, and indeed are to this day recognised, two great branches of law, the civil and the canon law. Christianity always repudiated any intention of subverting the State, or of swallowing up the civil power in the spiritual.

Crudelis Herodes, Deum
Regem venire quid times?
Non eripit mortalia,
Qui regna dat cælestia.

So it sang in the vesper hymn of the Epiphany, still retained in the Roman Breviary. And its founder had said *Cæsaris Cæsari*.[2] Christian-

[1] It may help to clearness if I say that 'the supernatural' is whatever of itself tends to bring man to the vision of God face to face in heaven, called 'the beatific vision,' a consummation not due to human nature as such, but opened to man by the grace of his Redeemer.

[2] *Jus autem divinum, quod est ex gratia, non tollit jus huma-*

ity argued itself compatible with civil government, as operating in a different sphere and contemplating a different end. Canon law was directed to the sanctification and eternal salvation of men's souls: whereas the State, as such, and the civil law of the State, was a natural institution, in view of public tranquillity, social security and justice, and the protection and co-ordination of temporal rights. Thus the Church had no concern with commercial tariffs, with the sewage question, or vaccination. But it stood ready to denounce commercial

num, quod est ex naturali ratione (St. Thomas, II–II. q. 10, art 10). But what shall I say of these words, written at Littlemore in 1845 by a future Cardinal? "There is a religious communion claiming a divine commission. . . . It is a natural enemy to governments external to itself; it is intolerant and engrossing, and tends to a new modelling of society; it breaks laws, it divides families. . . . Apologies, however eloquent or true, availed nothing with the Roman magistrate against the sure instinct which taught him to dread Christianity. It was a dangerous enemy to any power not built upon itself; he felt it, and the event justified his apprehension" (Newman, *Essay on Development*, ch. vi.). There is a weight of history in these words, but they are not, I think, inconsistent with the statement in the text. It is not necessary to be an invader to provoke resentment. It is sufficient to mass a large force on the frontier of a suspicious and unfriendly power. As I have shown, you cannot draw a hard and fast line of limitation to civil authority. On some such principle as that which I have called 'voluntary public control,' the civil power may wish to pour itself out on to certain march lands, and find the ground preoccupied by the Church. A non-Christian power will not brook this check. Cf. § 45.

frauds as a sin, an obstacle to salvation, and to punish the dishonest Christian trader, — the usurer, for instance, — by withdrawal of spiritual privileges. Beyond this, the Church came to claim, and the Christian State to allow, the right of visiting offences against religion, and scandalous immoralities, particularly of 'criminous clerks,' with temporal penalties. Furthermore the Church laid it down that, while the civil and ecclesiastical polities existed in different orders and for different purposes, and were so far forth independent of one another as their orders and purposes were different, yet the spiritual order was superior to the temporal, salvation of more consequence than political well-being. In practice, the priority in dignity of the spiritual order was balanced by the fact that the armed force was in the hands of the State; money was more abundant in lay coffers, especially after the rise of commerce, forbidden by canon law to ecclesiastics; and though the preponderance of intellect and education rested at first with the clergy, yet that inequality came in time to be redressed, or even reversed. The difficulty was, that both powers dealt with the same subjects, with the same living Christian men, women, and children, with their persons and with their wordly interests,[1] although not

[1] *E.g.* in marriage questions.

from the same point of view. Human nature would have needed to be far more perfect than as history has known it, had conflicts of Church and State never arisen. But so there are conflicts of man and wife.

§ 88. I have laid down the relations of Church and State briefly, according to the exposition of Bellarmine and Suarez, who assign to the Church only an indirect, or incidental, power in temporal matters. This doctrine is detailed with admirable clearness in Cardinal Manning's *The Vatican Decrees in their Bearing on Civil Allegiance* (London, 1875), and in Cardinal Hergenröther's "Essay XIII., The Power of the Church in Matters Temporal" (in *The Catholic Church and the Christian State*, Vol. II. pp. 204–232, Eng. transl.). But in Dr. Gierke's *Political Theories of the Middle Age*, translated by Professor Maitland (pp. 12–14, 105–120), I find, directed against Hergenröther, a great array of quotations purporting to show that "it is a mistake to represent the great Popes as proclaiming, and the common opinion of the later Middle Age as accepting, only that sort of 'indirect power in temporalities' (in Bellarmine's sense of these terms) which was claimed for the Apostolic See by later theorists" (p. 108). The theory which Hergenröther brands as an extravagance, — that theory which is the oppo-

site pole to Erastianism, and delivers over the civil power, hand and foot, to the ecclesiastical, — Dr. Gierke will have to be the accredited theory of the Middle Age. But he admits that it was not the sole theory then in vogue, and that there coexisted with it another theory, which is substantially the same as Bellarmine's (pp. 16–19, with notes 38, 49, 50, 51, pp. 118, 124, 125). He quotes Petrus Paludanus (*De causa immediata eccl. pot. a.* 4): *Papa est superior in spiritualibus, et per consequens in temporalibus, quatenus necesse est pro bono spirituali*: not observing how this sentence makes entirely for Bellarmine. He relies on Augustinus Triumphus and Alvarius Pelagius, two authors already noted by Hergenröther as extravagant. The extravagant view certainly was held: the question is, was it the dominant view?[1] Of two conflicting theories, both in the field six centuries ago, to say which predominated requires not only erudition and vast reading, but also a nice discernment of language, and, if the theories are theological, a considerable acquaintance with mediæval theology. Thus, to a theologian, the declaration in the *Unam Sanctam* of Boniface VIII., that every human creature is subject to the Roman Pontiff, means that the Church is of right coexistent with the

[1] It is censured by Dante, *Purgatorio*, c. xvi.

human race, and that the Pope is supreme in the Church for the purpose for which the Church exists, that is, for the salvation of souls: no more than that is defined, and, therefore, no more than that can be argued from the Bull as the belief of the Universal Church.[1] Nor can things said of the *Imperator Romanorum semper Augustus* be applied without discretion to any and every temporal prince: the Emperor, as none knows better than Dr. Gierke (cf. his n. 35, p. 118) was in a quasi-ecclesiastical position.[2] There are *buc-*

[1] The reasons alleged in a papal bull definitive of doctrine are no part of the definition. What Boniface says of the "two souls" (by accommodation of the text, Luke xxii. 38), and of the temporal sword being drawn "at the beck" (*ad nutum*) of the spiritual power, will not appear such a monstrous pretension, if we consider the Papacy as: —

α. Watching over the defence of Christendom and civilisation against Islam;

β. A court of arbitration to forestall war.

We have had our battles with dervishes: we are groaning under the burden of a costly war, and of armaments said to be on a 'peace footing.' War, like the poor, may be destined to be always with us: but the attempts of the mediæval Papacy to regulate war may claim to rank with the efforts of modern philanthropy to alleviate poverty.

[2] The first thing to do in order to any understanding of the mediæval relation of Pope and Emperor is to cast out all modern notions which attach to the latter term. Such a book as Mr. Bryce's *Holy Roman Empire* serves this purpose well. To mediæval eyes there could be but one Emperor in Christendom, one Emperor and one Pope. The Emperor was *advocatus Ecclesiae*, the champion of Christendom against her temporal enemies, the

cinatores in every camp: even good men wax hot and say strong things, which are not according to knowledge. A theological doctrine is first held vaguely, is then drawn into discussion, is exaggerated, is contradicted, and only after much tossing to and fro does it assume a definite scientific form: so Newman explained the development of doctrine. The definite, scientific, developed doctrine of the Catholic Church on the (ideal) relations of Church and State is not that which Dr. Gierke has gathered from sundry mediæval enthusiasts: it is the doctrine of the three Roman Cardinals, Bellarmine, Hergenröther, and Manning, and finally of Pope Leo XIII.[1]

born leader of Crusades; and to this intent, in St. Ignatius's words (*Exercit. Spir. de regno Christi*), he was "a king, to whom all princes and all Christian men pay reverence and obedience." To this intent he was crowned by the Pope. Till his coronation the Church spoke of him as 'emperor elect,' a title beyond which the Emperors after Charles V. never cared to proceed, till the very name of Holy Roman Empire perished in 1806. This is he for whom a collect, *Pro Imperatore*, is still printed in the Roman missal, and for whom several lines of prayer, now passed over in silence, may be read at the end of the *Exultet*, which is sung on Holy Saturday. The Emperor was also a temporal prince, usually King of Germany. *Who made the Emperor?* is a question foreign to the scope of this dissertation. But it is a different question from that other, *Who made the King of Germany or the King of England?*

[1] *Itaque Deus humani generis procurationem inter duas potestates partitus est, scilicet ecclesiasticam et civilem, alteram quidem divinis, alteram humanis rebus præpositam. Utraque*

§ 89. The bonds of Church and State have been loosened in our time. So far as we can peer into proximate futurity, the Church seems likely in point of fact to remain ranked among those numerous voluntary associations that have their rights safeguarded by the State in the ordinary administration of criminal law and maintenance of contract, — associations that the State

est in suo genere maxima: habet utraque certos quibus contineatur terminos, eosque sua cujusque natura causaque proxima definitos; unde aliquis velut orbis circumscribitur, in quo sua cujusque actio jure proprio versetur. Sed quia utriusque imperium est in eosdem, cum usuvenire possit ut res una atque eadem, quamquam aliter atque aliter, sed tamen eadem res ad utriusque jus judiciumque pertineat, debet providentissimus Deus, a quo sunt ambae constitutæ, utriusque itinera recte atque ordine composuisse. . . . Quidquid igitur est in rebus humanis quoquo modo sacrum, quidquid ad salutem animarum cultumve Dei pertinet, sive tale illud sit natura sua, sive rursus tale intelligatur propter causam ad quam refertur, id est omne in potestate arbitrioque Ecclesiæ: cetera vero, quæ civile et politicum genus complectitur, rectum est civili auctoritati esse subjecta (Encyclical, *Immortale Dei*, November 1, 1885). His Holiness goes on to speak of concordats as compromises favourable to the civil power. The distinction of that power from the ecclesiastical is clearly recognised.

As a witness from the Middle Age, I quote St. Thomas Aquinas (*Summa*, 2^a–2^{ae}, q. 60, art. 6, ad. 3), *Non est usurpatum judicium si spiritualis prælatus se intromittat de temporalibus, quantum ad ea in quibus subditur ei sæcularis potestas, vel quæ ei a sæculari potestate relinquuntur.* The two relative clauses are evidence that no unqualified subjection was expected of the secular power.

I may remark of concordats that they stand to the essential relations of Church and State something as civil law stands to natural law, determining the indeterminate.

would act unwisely in endeavouring to suppress or absorb. Should Christianity ever recover such a hold on the human heart as that nations shall wish to pay deference to the Church, and recognise it as endowed with rights and privileges above those of a mercantile company, not on that account must the precedents of the Middle Ages all recur. We copy the mediæval architecture, adapting it to our own sentiment and practice. We no longer build two churches under one roof, an open nave for the people, a screened-off choir for the clergy. The following are some of the differences that may mark any future resuscitation of mediæval Christianity. They are all differences for the better.

(1) The clergy will never again constitute the multitude of 'clerks,' or educated persons, distinguished from the 'lewd,' or illiterate 'layfolk.' There will be no need for a man to take Orders simply because he wants to study.

(2) We are likely to have seen the last of episcopal lord chancellors, and of Cardinal ministers of State in secular governments, — of Wolseys, Beatons, Richelieus, and Alberonis. The barbarism of lay nobles, fit for nothing but hunting and war, will no longer afford an excuse for prelates living away from their

dioceses in civil positions, 'to keep out worse men.'[1]

(3) Works of education and charity, though proper to the clergy, are not their exclusive appanage. The intelligent layman will often make a better charity commissioner or a better educator for purposes of this life.

(4) And generally, the spheres of civil and ecclesiastical authority will intersect less, to the saving of interference and conflict.[2]

§ 90. Had there never been any appropriation of Church property by the State, the Church by this time would have been rich beyond the bounds of calculation. That fact does not justify the spoliation; but it points to a need that would probably have arisen of some concordat between the ecclesiastical and the civil authority, whereby the expenses which now fall upon imperial and local taxation, and upon the munificence of private generosity, for educational purposes and the relief of distress,

[1] τὸ ὑπὸ πονηροτέρου ἄρχεσθαι ἐὰν μὴ αὐτὸς ἐθέλῃ ἄρχειν (Plato, *Rep.* 347 C).

[2] This speculation proceeds on the principle of the division of labour and the necessity of specialisation, things operative now as they were not operative under the Plantagenet and Tudor kings. The ways of life have been trodden into distinctness. Is it, further, too much to hope that history may not have been written in vain, and that experience on both sides may tend to render strife less probable? στάζει δ' ἐν ὕπνῳ πρὸ καρδίας μνησιπήμων πόνος. . . . δαιμόνων δέ που χάρις (Æschylus, *Agam.*, 179-182).

— to say nothing of new churches and foreign missions, — might have been largely met out of existing Church revenues. Wolsey's endowment of his 'Cardinal College' with the property of several decadent religious houses, suppressed by papal brief for that purpose, gives an inkling of more that might have been done but for Henry VIII. and his rapacity.

§ 91. However future history shall take its way, there remains the theoretical truth, that the highest perfection of which mankind is susceptible is not the official aim of the State, and cannot be directly reached by any action of the civil authority. The civil authority is *removens prohibens* (§ 78). The perfection and happiness of man is an individual work, which, under God, each man must accomplish in his own soul.[1] It is also a social work, but the society charged with achieving it is not the State.

§ 92. You cannot prove Christianity *a priori* (§ 43). You cannot get Christianity, as you get civil authority, out of human nature and

[1] "And thus, as the whole city grows and is well established, we must leave room for the operation of nature allotting to the several classes of citizens their due participation in happiness" (Plato, *Rep.* IV. 421 C). Every robust, clean-cut individual character is the type of a distinct class, — as divines say every angel makes a species by himself. Where State development stops short, individual development goes on.

natural exigency. Christianity is not a necessity of man, as man, though it is a necessity of the present historical order of Providence. Had no Christianity been given to us, religious societies of some sort would have had to be founded. They might have coincided with the several States, so that the State should have been a civil commonwealth under one formality, a religious commonwealth under another, — to borrow a comparison from Aristotle (*Politics*, III. 1276 *b*), as the same choristers may be formed now into a chorus for comedy, now for tragedy, — or as in the days of the prince-bishops the *Ecclesia Dunolmensis* and the *Comitatus Dunolmensis* were two aspects of the same *quasi*-State, where prince and bishop, being one and the same person, used to indite letters to each other.[1] Or otherwise, the boundaries of religious societies might have outgrown the boundaries of States, or they might have been less, many religious bodies in one State. That is speculation of what might

[1] See the Register of Bishop Kellawe, A.D. 1311–1316, in the Rolls Series. The mediæval conception of the *Ecclesia Romana* and the *Imperium Romanum* was similar, one body with two formalities, intended to gather into itself the entire world. Similar, yet not altogether alike: for, according to the distinction of formalities, there was to be a distinction of heads, the Pope and the Emperor. This bears out what I have written of the distinction of the temporal from the spiritual power.

have been, nay, of what in the present condition of Christendom actually is. Still, by positive divine institution, the one Church of Christ holds the field. To her it is given to supplement the State, and to operate beyond the farthest reach of civil authority, — finding man a citizen of earth, to exalt his conversation and citizenship to heaven: ἡμῶν γὰρ τὸ πολίτευμα ἐν οὐρανοῖς ὑπάρχει (Phil. iii. 20).

APPENDIX

To the Catholic theologian, preoccupied with his own science, and indeed to any mind that has concerned itself with the Bible rather than with anthropology and geology, the term 'primitive man' does not mean the man whose bones and stone implements are turned up in quaternary deposits, — the man whose social condition is estimated by observation of the social condition of savages, — but it means Adam and his children strictly so called, that is, the sons and daughters born to him of his wife Eve. A glorious creature as he came from the hands of his Creator, Adam must have still retained after his fall much of that knowledge of God and of the moral law wherewith his Maker had endowed him. Thus he knew the unlawfulness of divorce and of polygamy (Matt. xix. 5), and taught the same, as we may suppose, to his children ; although of polygamy we have an early record in Gen. iv. 19. No Christian anthropologist would call Adam a savage ; or deny that Adam and Eve and their immediate offspring constituted a perfect family, antecedent to the formation of any State. What the anthropologist will not allow is that we have any Biblical evidence, or any evidence whatever, of the perfect family existing as an institution over any wide area of the earth in the 930 years of Adam's life, or generally in the earliest age of humanity ; and by 'humanity' I mean here a multitude of 'much people' and a race of mankind.

Apparently, man is by origin a tropical animal. He still delights, when the climate will allow him, to live out of doors, to eat and drink *al fresco*, and part with much of his other-

wise enforced burden of clothing. But these favourable conditions of human life seldom obtain and rarely endure. In most times and places man is engaged, as was foretold (Gen. iii. 17–19), in a struggle in which nature has him by the throat. The labours of generations are requisite to overcome nature, to endow some portion of the community with leisure, to set art and literature and philosophy on their way, — in a word, to establish civilisation and the State. 'Primitive man' to the anthropologist means man at the commencement of this struggle. How far and by what steps of degradation this 'primitive man' is separated from the 'primitive man' of theology, the anthropologist does not know, no one knows. It is as though some very slow train, anything but a Scotch express, were traced from Edinburgh to the Border, and finally reappeared in sorry plight at Grantham, no one being able to tell the story of its intermediate passage. The remote date now assigned to early Assyrian and Egyptian civilisation makes one wonder whether some strand of culture and art has not run through all human history from the very first. If that hypothesis were tenable, it would follow that at no epoch were all the men on earth together in a state of savagery. However, it is generally argued that they were; and that we have passed through horde and totem group, and matriarchal and patriarchal households, to the tribe, and by the tribe to the developed family and State. No one supposes that this progress is made out with accuracy and certainty for every step. The study of it involves many plausible provisional hypotheses, hypotheses, however, which the student of political philosophy in these days cannot afford to shut his eyes to.

ESSAY II

SAVAGES

The scientific study of savages is dignified with the name of Anthropology. It is a new science. The savage used to be matter of curiosity and amusement to his civilised elder brother. Now that brother sees in him, in the Maori and the Algonquin and the Bushman, the pattern of his own early ancestors. This view has been greatly furthered by the acceptance of the Darwinian theory. But anthropology is a science by itself apart from biology. It takes man when and wherever it finds him as a man, and is not concerned to know how man came to be. Apart from Darwin, apart from all derivation of the human species from lower forms, we may believe, if we will, that when there first came to be upon the earth, not this individual man, or that particular family, but a race of men and a multitude, the race was in the state and condition of savages; and that from these savage ancestors the most civilised races on earth have been evolved through ages of gradual progress.

This belief is everywhere dominant: you cannot open a book of modern science or philosophy in which it is not presupposed. Leaving biology out of the question, the anthropological and antiquarian argument on which the belief is founded comes to this. Practices, institutions, modes of thought, common to savages and to the remote ancestors of civilised people, and still traceable underneath the civilisation of the said people, are evidence that those ancestors were in the same stage of evolution in which these savages now are. But there are innumerable such practices, institutions, and modes of thought, common features of existing savages and our ancestors, and discernible even in ourselves: this is proved by many careful observations of antiquarians and travellers. The conclusion follows. The argument looks stronger when the record of those observations is read than when put in this abstract syllogistic form. To do it justice, some such books should be read as Keane's *Ethnology* and *Primitive Man* (Pitt Press), and the *Anthropology* of Dr. Tylor, of the University Museum, Oxford.

When I say that books of modern science and philosophy all presuppose this conclusion, I reserve Catholic books. I cannot say how far the conclusion is accepted in the Catholic

schools. My impression is that it is not definitely discussed there. Catholic teachers are taken up with urging the necessity of a Creator against extreme forms of Darwinism. Their debate is biological, not anthropological. Anthropology does not receive due attention in Catholic philosophy. I mean that, leaving the origin of man alone, and confining ourselves to undoubted facts of human history, we do not sufficiently concern ourselves about the moral and social condition of primitive mankind. So far as I know, there is no pronouncement of the Church on the matter. All that the Church asserts is the unity of the human race, all descended from one ancestor, all born in original sin through the transgression of that ancestor, and all in need of the redemption of our common Saviour. Of course, the Church also asserts whatever is meant and asserted by the narrative of Genesis. But the Church has afforded us no authoritative interpretation of that most obscure narrative. No theologian will undertake to say who were the inhabitants of the *city* that Cain built.[1] Like all early historians, the writer of Genesis is mainly concerned with genealogy, with the descent of that particular family which produced Abraham and the Jew-

[1] Gen. iv. 17.

ish people. He throws no light on the social condition of earliest mankind at large, beyond informing us that they were very wicked. Whatever knowledge Adam had in Paradise, we are nowhere told that he was able to perpetuate that knowledge in his children over any wide region of the globe. Abel had flocks of sheep, and Cain was a husbandman: but we do not read that the domestication of animals was generally practised from the first, or that, wherever man went, he mapped the earth out into agricultural districts. A few may have known what the many were ignorant of, as to this day the ways of Pall Mall are not the ways of the valley of the Zambesi. Fallen into sin, struggling with a nature both within and without no longer subject to him, roaming in search of a livelihood over an earth under a curse, man would have degenerated rapidly, and soon fallen very low. The Church, I say, is silent on the subject; and from my own private searching of the Scriptures, I do not gather anything to settle the question whether the primitive races of mankind, as races, were savages or not. Thus we are referred back from the Bible record to anthropology.[1]

[1] The Bible was not written for a manual of anthropology, nor of any other *ology*, not even of theology, of which last it affords the materials, but is not a scientific treatise. But though

To the anthropologist, 'savage' is no term of moral censure. It does not mean 'bloodthirsty and ferocious.' As a matter of fact, the lowest savages are quite harmless and peaceable in their everyday life, hospitable, and even kind to strangers. A man may be a very good man after the fashion of his time, and yet be a savage. Above the 'savage,' in the scale of civilisation, ranks the 'barbarian.' That again is not a term of reproach. The contemporaries of the patriarchs were 'barbarians': a 'barbaric' civilisation means, in fact, a patriarchal condition of society. Lastly, as regards the word 'civilised.' All men are more or less civilised, for 'civilised' means simply 'humanised.' When we speak of 'civilised' times as supervening upon savage and barbaric times, we mean times of higher civilisation, — the times of πεπαιδευμένοι (educated and humanised mankind) as compared with παιδευόμενοι (mankind under education). No modern population is yet through its whole extent 'civilised': nay, how many or how few individuals are there perfectly πεπαιδευμένοι?

Savages to the anthropologist are more interesting than the most highly educated persons, at least when he gets not too much of their company. To his regret savages are disappear-

it does not settle things for him, the Bible yields the anthropologist most valuable and authentic side-lights.

ing, some dying out, others aping European dress and manners, and relinquishing their own deft handicrafts to make gaudy third-rate articles in the London or Manchester style. Travellers in the seventies of the bygone century saw what is not to be seen now. Hence old books of travels and collections made years ago teach things that would not be learnt by observation of savage life as it actually goes on at this hour. If any one would read through the twenty-six volumes of the *Lettres Edifiantes*, and, being a person capable for that purpose, would note down and publish all that bears on the manners and conditions of savages, he might render a service to science.[1]

Man is measured by his tools. The evidence of geology goes to show that primitive man had no tools but wood, presumably, which has perished long ago, and stone tools, not ground at first (though they were ground later), but sharpened by chipping off pieces, and held in the hand without a handle. Better stone implements, and then copper, and then iron instruments, came later. It is commonly argued from geology that in the days of primitive man all mankind were savages, closely resembling the savages that are now, or have existed till

[1] The *Lettres Edifiantes* are letters of French missionaries in the eighteenth century.

quite recently. What then is a savage? Of his tools I have spoken. Stone tools, and sticks pointed like spears by charring in the fire: with these he digs up roots, with these he assaults or repels his enemies, as modern men do with sword or bayonet. He is acquainted with the use of fire. One of the greatest efforts of his life is the kindling of fire by means of pieces of wood, rubbed against each other, or turned round, as we turn a gimlet, one within the other. The making of a fire being difficult, he is anxious not to let his fire go out.[1] He is a cooking animal, in the sense that he roasts things sometimes, but often devours them raw. You may know a savage from a civilised man by his food.[2] Of the food of a civilised man, great part is far removed from the state in which nature originally presented it, so transformed as to be quite unrecognisable to the eye for what it originally was. The savage eats things almost as he finds them, berries,

[1] "And as when a man hath hidden away a brand in the black embers at an upland farm, one that hath no neighbours nigh, and so saveth the seed of fire, that he may not have to seek a light otherwise, even so did Odysseus cover him with the leaves" (Homer, *Odyssey*, V., Butcher and Lang). The mention of the "upland farm," however, shows that this savage has passed into the barbarian.

[2] This distinction is drawn out in Mr. E. G. Payne's *History of the New World called America*, 2 vols., Clarendon Press.

roots, herbs, nuts, and the flesh of hunted animals. He practises no agriculture. He has no domestic animals but dogs. He is no solitary, but lives in the society of his fellows. In his ordinary practice he is a monogamist, and will not have two wives at the same time, unless he is a great man; but the family, as we understand families, is not yet formed. He believes that he has a soul, which he calls his 'shadow,' or his 'breath.' He is a great believer in disembodied souls or spirits, with which he peoples all nature. The capricious action of these spirits stands in his philosophy for what we know as physical causes. It is hard to say what the savage thinks of any Supreme God: but of the spirits he is vastly afraid, and propitiates them with observances and offerings of things useful to himself, which he takes to be also useful to them.

But supposing all mankind to have been at some remote epoch together down on the low level of savagery, it is a serious difficulty to conceive however they can have risen to civilisation. The lowest savages that we know are not progressive races: it does not look as though a thousand years of existence would improve them. If we may trust the traditions of the indigenous races of America and other countries, whenever an improvement has been

effected, it has been by means of strangers from without, superior persons, coming in upon and educating an inferior race. With all the world on a dead level of savagery, there would be no superior persons. There was a Dutch ship once, so the story goes, in which all the sailors in a storm were lashed to the rigging in such a way that they could not loosen themselves, all except one, who was to loosen the rest; and he lost his balance, and remained hanging by his feet inextricably, so there was no deliverance for any of that crew. This is one of the many difficulties of anthropology. I have never seen it considered and met. If all mankind were Ainos ten thousand years ago, they would probably be Ainos to this day; or, possibly, the breed would have died out. I have a suggestion to meet this difficulty. I opine that there are savages and savages: savages who are such merely by stress of circumstances, and other savages who have in their blood the elements of degeneracy and degradation; in other words, progressive savages and stationary savages, just as a farmer might have on his land stock that he could improve in time, and bad cattle that can never be improved. How came these stationary savages to be? Principally, I take it, by gross violation of the natural laws of mar-

riage.[1] Other causes, as poverty and hardship, may have helped. The stationary savage then is a savage who has deteriorated, coming of better ancestors, and in his degeneracy has sunk so low as to have become, at least if left to himself, hopeless. If this be true, — and I merely put it forward as an hypothesis to be considered, — scientific enquirers are committing an error, when they put together and fuse into one common mass of evidence all particulars that they find, no matter about what savages, and argue thence the common characteristics of the savage state. Instead of that, they should distinguish savage from savage, the savage progressive from the savage degenerate and, of himself, unimprovable. I think the hypothesis worthy of consideration, because while there are many observed facts of savage life remaining savage, little or nothing has been observed — I do not say, nothing has been argued, but nothing has been observed — of savages actually making progress of themselves unaided by any superior race. Moreover, observation of certain savages seems to show them destitute of all native aptitude for progress, when left to themselves. Are we not rash in taking any and every savage race that

[1] The Zulus, I am informed, do say this of the inferior races about them.

we encounter for a type of the ancestors of civilised man?

It may then be a mistaken notion, that all savages are on the up grade, and have in them the capacity of progress. There is another notion which I think quite a mistake, that whatever savages do and think is wrong, and that the thoughts and behaviour of barbarians also are for the most part wrong. Were that the case, there would be no progressiveness either in savage or barbarian. Many things that such people do may be quite right in them, though an identical conduct would be wrong in us. I do not merely mean that they know no better, and so are excused for their ignorance. I mean that, and something more than that. Things that do not befit us are sometimes the best things available to the savage in his savage state, and are objectively right in him, inasmuch as they do so befit him. If he is converted to Christianity, — and he ought to be converted, when Christianity meets him in a form that he can appreciate, — then he is raised to a higher state, and those habits of an inferior being befit him no longer: they would be in him, if he continued them after his conversion, inappropriate, indecorous, and sinful. Morality is conduct befitting human nature. But "human nature is changeable, and therefore what is

natural to man may sometimes fail to hold good."[1] What befits the civilised man does not exactly and in all points befit the barbarian; and points of good conduct proper to the barbarian cannot be expected of the savage. The natural law is the eternal law received in human consciences as a norm of action. Where humanity is imperfect, the reception is imperfect, and the law does not fully hold.

You cannot bind men to a standard of conduct, the cogent reasonableness of which they not only do not see, but are incapable of apprehending. The ideal standard of rectitude is not obligatory to its full height upon such incapacity. The incapacity of individuals here and there we may pass over. Law is not framed to suit individuals in their individual varieties: law is a standard of action for a community. Only when a whole people is found incapable of it, can the fulness of the natural law be said to suffer derogation. And we must not exaggerate the deficiencies of savage nature. Like the scars and rifts in a mountain side, the varieties of human nature are accidental, not substantial; and the saying holds good of man even more perhaps than of mountains, that man is now at heart and in the main what man was at the beginning of history. Therefore the

[1] St. Thomas, 2^a–2^{ae}, q. 57, art. 2, ad. 1.

changes in the natural law are accidental, not substantial. Those 'primary precepts,' or primary moral judgments known as *synderesis*, have never changed: but certain 'secondary' and derivative precepts have under certain circumstances not been applicable, or advisable for any legislator, even the Highest, to enforce. We must love our neighbour, says *synderesis*, but is an enemy a neighbour? A fellow-citizen of Pericles would not have owned him for such; nor, I suspect, many of the subjects of King Solomon. For centuries, charity was tribal, and a stranger came near to the rank of an enemy. It would never do in England, when a murder is committed, to punish the whole district until the offender is detected and brought to justice: that would be to punish the innocent with the guilty, an unrighteous proceeding. But among the Kaffirs this system of vicarious responsibility, or the liability of the neighbourhood for crimes committed in it, is said to be the sole method of prevention of crime: it suits that barbarian people, they expect it, and it is the right way of dealing with them.[1] We have here the key, I think, to the perplexities of Old Testament morality. The men that we read of in the Old Testament were

[1] On vicarious responsibility, see St. Thomas, 2^a–2^{ae}, q. 108, art. 4, ad. 1 and 2 (in *Aquinas Ethicus*, II. 210, 211).

not savages, but they were what are called technically 'barbarians,' or men in the patriarchal stage of civilisation; and God governed them and legislated for them according to the condition that they were in, — He made the best of His materials, — not as He governs us and legislates for us, since the Sermon on the Mount. Patriarchal virtue is not Christian virtue, but falls short of it in many respects.

There is on the earth in our time a Power, with a function to arrest and remedy the decay of natural law, as well by promulgating the law in its full amplitude, as also by rendering it practicable and possible of observance in that same fulness. The living authority of the Church teaches morality, sometimes by explicit decree, but usually by the writings of her approved moral theologians, by the tradition of the Moral School preserved among her clergy, and by the practice of the confessional. Thus, wherever her influence goes, the Church maintains, fixes, and crystallises the natural law. But if the Church merely kept the theory complete, and did not assist the practice of the law, the law might still sink into abeyance in certain points for lack of capacity in human kind to fulfil it. There are points of the natural law, such as the forgiveness of enemies, and generally the restraint of the more

imperious passions, which it is impossible to observe steadily and regularly without the grace of Christ. The public channels of this grace are the Sacraments and ordinances of the Church. Mere promulgation of the law, without supply of aids to keep it, would put the hearer in a false position, as St. Paul insists, writing to the Galatians and Romans. Better have no promulgation, and let such arduous observances go by the board, as indeed they did in pre-Christian times,[1] than have the law promulgated, and so with full knowledge broken, and *formal sin* committed.[2]

It may be asked: Since natural law, or the sum of recognised reasonable requirements in the matter of human conduct, grows with the development of human society, and since human society cannot be supposed to have yet attained its full stature and perfection, may we not look for a heightening of human duty by a further extension of natural law? May not, for instance, certain points of charity and almsgiving, now regarded as counsels only, pass into downright commands and exigencies of human nature in its further perfection? I believe Aristotle would have replied

[1] See my *Notes on St. Paul*, on Rom. iii. 25, 26; v. 13, 14.

[2] Rom. vii. 7–11. See the late Cardinal Mazzella, S. J., *De gratia Christi*, pp. 247–268, ed. 1878, Washington.

in the negative: ἡ φύσις οὐκ εἰς ἄπειρον, he might have said: there are limits to the perfectibility of every nature or kind in this world. Remaining mortal, remaining an animal of limited reason and beset with passion, there are limits to the moral perfection to be expected of a being such as man. Mr. Herbert Spencer apparently thinks otherwise. He has such faith in the hereditary transmission of qualities, that he looks forward to a far-off period to come, when man will do his duty with the same zest and enthusiasm with which an artist goes about his work. Perhaps heredity may be helped out to this conclusion, as others have proposed, by the gradual systematic extermination of the incapable members of the human family; or, as others recommend, by the bringing on of socialism, and the extinction of the greed of private capital. But this is a consummation too far off to be worth arguing about. Meanwhile popular sentiment bids fair to insist upon certain observances, not heretofore considered as morally binding, and to erect them into terms of communion in civilised society. I refer to such points as cleanliness, hygiene, physical training, prevention of pain, and kind treatment of the lower animals. These are human commandments in process of enactment. But with these new

enactments, whatever their moral force, is there not coming in a certain disregard of the decalogue? The new era does not promise to be conspicuous for worship of the true God, nor for obedience to parents; it threatens the overthrow of dogmatic religion and the weakening of the family tie. The recognised area of moral obligation seems to be moving slowly, like a glacier, advancing to new ground, but leaving old ground uncovered. Purity and meekness cannot be said to be coming into greater vogue. The standard of these virtues, upheld by the Christian Church, and by her insisted upon as of natural obligation, is high above the average practice of the most civilised societies of to-day. It will be long enough before human nature grows so perfect as to exact any higher observance than that of the purity and meekness prescribed in the Sermon on the Mount and the acceptation of that discourse traditional in the Catholic Church.[1]

But it is time to return to our savages. There are people who would agree to this, that what savages do is sometimes right in them when it would be wrong in us; but then they go round nearly so far as to hold

[1] On the variability of the moral standard, see Dr. Fowler's *Progressive Morality*, or Fowler and Wilson's *Principles of Morals*, Pt. II. pp. 227–248.

that what was right in the savage is always wrong in us, — that it is always wrong in us to cherish any beliefs or practices that can be traced to the beliefs and practices of our savage ancestors. They would have us put off the savage with all his works and ways, as though his religion were a sheer delusion, and his poor makeshift for a philosophy radically erroneous. For example: the savage is convinced that he has a soul, though he hardly rises to the conception of an immaterial being: he peoples the air and the woods with ghosts, the shadowy forms of his ancestors: he ascribes the operations of nature to ghostly agencies: he is anxious to propitiate these unseen powers with prayers and offerings: his idea of sacrifice is to give to the ghost or ghoul something that the latter is in need of, or is glad to have, as we fee a physician: the thing offered is burnt or put to death, because by death or by fire it passes to the world of spirits, and so reaches him whom it is meant to propitiate. Therefore, it is argued, we can have no souls: did not our savage forefathers think of the soul in a grotesque way? and is not that argument enough to show that we have no souls at all? And, by the same reasoning, all belief in angels is utterly fond and foolish. Say the same of all prayers put up to Heaven for aid in our

bodily necessities: we recognise laws of nature, whereof the savage had no idea; and where laws of nature obtain, what room is there left for divine interference? As for sacrifice, either you believe in no God at all, or you believe in a God who is self-sufficient and in need of nothing: either way the tradition of sacrifice, come down from days of savagery, must be dropped. Because God is in need of nothing, it would seem, He is not pleased to be honoured by His creatures. Because His children's presents are trifles in themselves, the Father does not care to have them. Reasoners of this cast really believe in no personal God at all, that is to say, not in any God who has any will and choice. Did not savages worship a Great Spirit? and is not that enough to confirm civilised man in the rejection of every form of 'anthropological' Deity? To the civilised man, disciple of Comte, it is quite enough. I refer, of course, to Comte's three stages of human thought, the Theological, the Metaphysical, and the Positive stage; the first stage being subdivided into fetishism, polytheism, and monotheism. Savage life begins in the first subdivision of the Theological stage; and civilisation, according to this authority, ends in the Positive stage, where the method of physical science reigns supreme and sole, and no

causation is recognised but that of physical causes, as they are the concern of the physicist. Thus for everything there is a mechanical, or chemical, or biological explanation, and we can explain no further. In this system, carried to extremes, each successive stage is attained by the utter wreck and abolition of the previous stage. C is the undoing of B, as B was of A; as though youth kept nothing of childhood, and maturity killed and cast out youth.

This is not evolution and orderly development, but a *processus per saltum* of revolution and catastrophe. Nor is there any guarantee that the Positive stage and the dominance of physical science will be final. It may be swept away to make room for a Spiritualist stage, occupied by nothing but thoughts; and that again may give place to a Pessimist stage, which will exhibit the vanity of all thinking, and lay bare the essential misery of consciousness even to western minds.

Philosophy has no liking for cataclysms: it is a respecter of the thoughts of men that have been from the beginning, *cogitationes antiquas, fideles*. Science is the study of continuities. The savage is continuous with civilised man; and the thoughts of the savage should have their analogue in the most highly educated thought of our day. So far from the belief of

the savage in a world of spiritual beings, in prayer, in a ritual of propitiation, militating against any similar beliefs being still entertained by us, it furnishes some reason why we should entertain such beliefs, — improve upon them, but not utterly discard them.

ESSAY III

CASUISTRY

CASUISTRY is the study of cases of conscience. Its aim is to define the exact limits and frontiers of wrong-doing. The casuist says to a man: 'Thus far mayest thou go, but no farther: another step is wickedness.' He does not invite him to go even so far. To fix a mark on the ice by way of showing that it is unsafe to go beyond, is not any recommendation of the ice immediately short of that mark to the special attention of skaters. He is a useful man who places such marks on the ice, provided he lays them judiciously, neither assuming the objects of his care to be as light as gossamer nor as heavy as wagons. So we might have thought the casuist to be a useful man, and one entitled to public favour and consideration. But in fact he is very unpopular, he and his art. If we might define it according to the ordinary English estimate of it, we should say: Casuistry is the art of minimising, and teaching others to minimise, moral obligations as well in speculation as in practice.

Sir James Mackintosh, for example, writes thus: "The tendency of casuistry is to discover ingenious pretexts for eluding that rigorous morality and burdensome superstition, which in the first ardour of religion are apt to be established, and to discover rules of conduct more practicable by ordinary men in the common state of the world. The casuists first let down morality from enthusiasm to reason; then lower it down to the level of general frailty, until it be at last sunk in loose accommodation to weakness, and even vice."[1]

It would be idle to pretend that there is no danger of this abuse ever occurring. "The Jesuits," as Sir James goes on to tell us, "were the casuists of the seventeenth century." The General Congregations of the Order, assembled in the course of that century, passed repeated decrees against "novelties and laxities of opinion in matters of moral." It is not the wont of these Congregations to legislate against wholly imaginary dangers. But there is a higher authority in the Catholic Church, ever vigilant to prevent the keen intellects of moral professors from whittling away the law which they are set to expose. No great extravagance of casuistry will ever go unrebuked at Rome. And the rebuke is writ-

[1] *Memoirs*, I. p. 411.

ten down and preserved as a warning to future generations. Innocent XI, in 1679, condemned sixty-five moral axioms together as lax or loosely worded. Here are some of them: —

"With a cause it is lawful to take an oath without any intention of swearing, as well in trifles as in grave matters."

"He satisfies the Church's precept of hearing Mass, who hears two parts of it, or even four together, said by different Celebrants at the same time."

"It is lawful to steal, not only in extreme but even in grave necessity."

No professor of casuistry in a Catholic seminary, who valued his place, would venture to teach any proposition that had ever been condemned at Rome.

The Church has every reason for watching with jealous eyes over what we may call the purity of casuistry. For as cases are solved in her schools, so are they decided in her confessionals: the one is a preparation for the other. And the confessional is a vital organ of the Catholic Church. Where it works healthily, she flourishes and thrives: where it is out of order and ceases to act normally, her very existence is there threatened. And this lets us into the reason why casuistry

is unpopular in England: it is unpopular as the confessional is unpopular. The study of the law is wrapped in the same cloud of odium which rests upon the court where that law is administered. It came very well from Pascal and other writers of Jansenist proclivities to lampoon casuists and turn casuistry into a byword of reproach: this same school virtually abolished the confessional also, by making it to be really, under their direction, what the heretics at the time of the Council of Trent had mendaciously styled it, a *carnificina conscientiarum*, "a torture-chamber of consciences."[1] If Jansenism had held its way, and had not been restrained by the hand of God, and by the vigorous action of Popes like Innocent X and Clement XI, there would have soon been no more casuistry, for people would have ceased to go to confession.

Casuistry is the study of the law which is administered in the confessional. It is by no mere metaphor that the confessional is called "the tribunal of penance." The Council of Trent,[2] speaking with dogmatic precision, says that Christ being about to ascend into Heaven "left priests behind in place of Himself as judges, that all crimes, amounting to mortal sin, into which Christ's faithful ever fell, might

[1] Conc. Trid. Sess. 14, c. 5. [2] Sess. 14, c. 5.

be brought under their cognisance, in order that, using the power of the keys, they might pronounce sentence of remission or retention"; and further, that priests "could not exercise this power of judgment without examination of the case"; and again, in the ninth canon of the same Session, the Council anathematises "any one who shall say that the sacramental absolution of the priest is not a judicial act." Every time that a priest is seated in the confessional, he is there as a judge. He must, then, possess jurisdiction as well as order; otherwise his acts are invalid, and his absolution goes for nothing. He must be in fact either the ecclesiastical superior of his penitent, or the delegate of that superior. Being a judge, he is bound to decide according to the law of the court where he sits — the court of conscience it is called. The law there current presents many nice points for decision. The study of these, as I have said, is casuistry. It is essential to the training of a priest. It is matter of professional interest to him, and occasionally of keen discussion, as the treatment of wounds is to a surgeon.

The law which governs the decisions of the tribunal of penance is, first, the law of the ten commandments, which is the natural law of God; then the law of faith and of the sac-

raments, which is the positive law of God; then the canon law, which is made by the Church; and the civil law of each particular country, so far as it is addressed to consciences. The science which is conversant with all these varieties of law, so far as they have any bearing on the confessional, is called moral theology. Moral theology gives the general principles, which casuistry applies to particular cases. As a matter of fact, however, the word 'casuistry' is hardly ever heard in the Catholic schools. We say of one who is a referee in cases of conscience, not that he is a good casuist, but that he is a good moral theologian.

Moral theology is principally made up of two other sciences, that of moral philosophy and that of canon law, without however being identical with either of them singly or with both of them put together. We will examine how each of the two sciences named enters into moral theology. And first of moral philosophy. That science has two branches — Ethics, which deals principally with the theory of right and wrong, and the exact import of those two ideas; and Natural Law, which defines what actions are obligatory or wrong of themselves and by the nature of things, antecedently to any positive law,

human or divine, but not of course antecedently to the Eternal Law, which is the will of God enacting whatever the nature of things requires. Ethics concern the moral theologian much as biology is the concern of the physician. The latter must have correct biological notions, the former right ethical notions. A biological *fad* might set a doctor wrong in his practice on a nice point and extraordinary case, where he would have to be guided by theory rather than by routine and direct experience. Many patients in bygone ages suffered from their doctor's biological *fads*, ideas of 'humours,' 'vital spirits,' *contraria contrariis*, and so forth. In like manner, one who held the utilitarian view of morality, which we presume is not a correct ethical notion, would be likely to be over liberal in allowing deception or the taking of life, where the public good seemed to require it. He would not have that idea of the sanctity of human life, or of divine truth, or of heavenly purity either, which comes of sound ethics, and is necessary in practical issues to enable us firmly to refuse to barter golden right for brazen expediency.

On the other hand, the physician need not remember all the grounds and arguments on which his correct biological notions rest. It is

well that in youth he should have made some study of these grounds, and even have been examined in them as in a point of preparatory learning, previous to his taking his degree: but this learning is after all only preparatory, and the increase of it, or even the retention of it, is not necessary to that competency of science and skill which warrants him, not only in bearing the name, but in doing the work of a doctor of medicine. Nor need the moral theologian and practising confessor be versed in the controversies which lead to correct conclusions and to the refutation of errors in ethics: though it is well that some of his youthful ardour of enquiry should have been expended upon these points.

Not the whole of ethics, then, enters into moral theology. But when we come to enquire how much knowledge of natural law the moral theologian as such should possess, the answer must be a universal and a sweeping one: *all natural law.* The whole of this science seems to be comprehended in moral theology. Even the labour question, rent and usury, the origin of property and of the civil power, the respect due to the one and to the other, the exposition of the follies of Rousseau and of the Socialists, — all these topics are full of matter of conscience; and a scientific grasp

of them belongs to the confessor who is thoroughly prepared to deal with all sorts and conditions of souls.

To moral theology there also belongs a considerable portion, but by no means the whole, of canon law. The latter is the law of the exterior tribunals of the Church; and as this law binds the conscience, and is made expressly for the salvation of souls, and deals with spiritual matters, such as the Sacraments, it needs must largely regulate procedure in the interior tribunal, or court of conscience, which is the sacrament of penance. One has but to take up any of the ordinary text-books of moral theology, and mark the quantity of canon law that it contains, making perhaps as much as one third of the whole. The commandments of the Church belong to canon law: so also do the provisions for the lawful administration of the Sacraments and the celebration of Mass: also questions of jurisdiction in the sacrament of penance, and reserved cases: likewise the censures, as they are called, of excommunication, suspension, and interdict; and last, but not least, the ecclesiastical impediments of matrimony. On the other hand, the moral theologian does not study canon law in its sources: he is not versed in the decretals as such: he is not a master of

the phraseology and procedure of the ecclesiastical courts and the supreme Roman Congregations: nor is he conversant with more than the outline of the vast subject of benefices. But, most noticeable difference of all, the moral theologian keeps quite clear of the *forum contentiosum*, where canonist meets canonist and there comes the clang of (canonical) war. His *forum*, the tribunal of penance, is not a place of contention and strife between man and man, for there is only one man present in his own proper person, the other is there as God's delegate, and the transaction between them is of submission on the part of earth and pardon on the part of Heaven.

It sometimes happens that one human being who has a contention with another, which should go before the Church's exterior court, brings the matter into the interior court of conscience. This he does that he may be enabled so to conduct his suit with men and before men as not to offend God, the Sovereign Lord and Judge. The judge of the interior court must have such knowledge of the procedure of the other court as to be able to direct his penitent to this effect. In particular, he must know where his own jurisdiction ceases, and the jurisdiction of the exterior court begins. Thus, however convinced a confessor may be

of the invalidity of a marriage, — even though his conviction be so strong and certain that he cannot allow the parties to live together as man and wife, — yet he can never sanction either party's making a new match, until a juridical sentence of the nullity of the previous marriage has been obtained from or through the bishop.

The moral theologian, as every ecclesiastical student knows, has the name of being more indulgent than the canonist. The canonist, it is believed, will bring the law down upon you, if he can: whereas the moralist will let you off, if he can. The effect of the two courses followed together is supposed to be to keep the student's mind in equilibrium between laxity and undue rigour. However this may be, there are not wanting reasons why we should expect a larger and more liberal allowance for human nature from the moral theologian than from the canonist, — in the court of conscience than in the exterior tribunal. The moral theologian and confessor *gets nearer* to his penitent than the canonical Judge does to the defendant that comes before him. In this sense the confessor gets nearer, that he hears excuses and pleas that cannot be substantiated, sometimes even are not allowed to be pleaded at all, in the outer court. In the court of conscience the accused is the wit-

ness against himself, and the only witness. Now a man cannot be witness against himself without being to some extent also counsel for himself. He has done *this*, but with *these* extenuating circumstances: he has done *this*, but not *that*, simply *this* and no more. And it is a rule of law, that *credendum est pœnitenti*. The penitent must be believed, except where he is manifestly lying or mistaken. But in the outer court there are a multitude of witnesses against the defendant: and these may create a legal presumption against him, which he is not able juridically to dispel. Or he may have incurred an obligation, which in conscience binds him only remotely, or as they say, *post sententiam judicis*, that is, after sentence has been pronounced upon him in the outer court. If he comes only into the interior court, and never into the outer court at all, this obligation will not be pressed upon him.

Is it a good thing for morality and public order that there should exist a court so favourable to the delinquent as the tribunal of penance? Most certainly it is a good thing, for the court is God's own personal erection; and all God's works are good, and conducive in themselves to that beauty and tranquillity of order which He loves. This is answer sufficient for Catholics. Moreover, Catholics alone

have experience of the tribunal of penance; and their experience of it is practically unanimous, that the frequentation of it makes them as well more inwardly pure before God as also more just in outward act towards their neighbour than they otherwise would have been. For others who are not Catholics, and who have no such experience, it may be well to remark that it is dangerous to drive a delinquent to desperation; that it is well that there should be some place where the fallen or the falling man may appear, and have the law of God administered to him exactly as it binds him with all his peculiar dispositions and circumstances, every abatement being made that the calmest and kindliest reason can allow for his case. It is this compassion dwelling in the heart of the priest for them that are ignorant and err,[1] that has prompted what Puritans have named "the subtleties of casuistry." Certainly this compassion has at times gone to unwise and unlawful lengths, and to airy and unreal distinctions between right and wrong; and as often as it has done so, it has been sternly repressed by the Church. But the motive that prompted this occasional excess might have inspired more respect than it has received.

[1] Heb. v. 2.

An opinion as indulgent as a strict regard for the facts and likelihoods of the case will allow is especially desirable where a deed of a questionable character is not under debate, but has actually been done, and the debatable point in the mind of the confessor is as to the amount of reparation that it is necessary to exact of penitents, whose good dispositions must not have a needlessly heavy load laid upon them. Supposing A has been guilty of a piece of gross partiality and favouritism in the making of some appointment. When he enters into himself and repents, the question arises, whether the appointment was a violation of strict justice.[1] If it were, he would have to offer some satisfaction to the injured party. Obviously it will be easier for A to make his peace with God, if a solid ground can be found for thinking that no violation of justice, strictly so called, has been committed, and consequently no obligation of making satisfaction can be urged upon him. Otherwise, he may refuse to make satisfaction: or what is more likely, he will promise and then not make it. A well-founded opinion in favour of liberty here is not a smoothing of the way down the abyss that the man may fall

[1] As moral theologians know, an act may be a sin against distributive justice, or some other virtue, without being a violation of strict or commutative justice.

into it, but a smoothing of the way up that the man may come out of it. It may be asked: Is not the way up also the way down? Yes, it is the same way, but salutary or dangerous according to the direction in which it is traversed; and we will warn people from going down it. In other words, consult a wise casuist before you leap, and he will hold you back: when you have taken the leap, he will not call a sprain a fracture, and he will not put you through more surgical treatment than necessary.

As for the subtlety of casuists being made matter of complaint against them, the complaint is no more reasonable, and no less so, than the complaining which we hear of lawyers and their subtleties, especially when the latter call for payment in pounds, shillings, and pence. All law is subtle, divine law and human law, natural and positive law: every law has its nice points. We have conscience indeed for our guide, but not an omniscient guide: on the contrary, conscience cries to be instructed, and often stands perplexed. We may disregard the perplexities of conscience, and act as our humour prompts us, but that is hardly the behaviour of a conscientious man, or of one who has much horror of sin. Much better bring our reason to bear on studying the path of

duty. After all, it concerns us more to know the path of duty than the paths of the stars. Yet astronomy is an honourable science: so also should be moral theology, or, if you will, casuistry.

There is a difference between a theoretical and a practical casuist. The difference is this, that the latter, with all the knowledge of the former, has also an eye to take in all the relevant circumstances that attach to the case in hand, and has, moreover, the invaluable moral gift of being able to make up his mind. There are men, stored with erudition, who can never give you a plain *you may* or *you may not* in any perplexity of conscience. They will tell you what consideration to add in, and what to subtract, but they never can trust themselves to pronounce what the reckoning comes to. Such theoretical advisers are useful to intelligent people, who can imbibe their erudition, and thence make up their minds for themselves; but they are no use as guides to the common run of humanity.

It follows that the endowments of the confessor and of the moral theologian are not quite identical. The confessor must be a practical casuist, such as we have described him, able to make up his mind and to 'intue' present facts. This intuition of the facts of

the case is matter of considerable tact. The facts of any case met with in a book of moral theology are described by an expert: they are reliable, and they are *all* the facts. But the one witness in the tribunal of penance, the penitent himself, is often anything but an expert in moral matters, often obtuse of perception and incoherent in his explanations, often frightened and shy, often self-deceived, and sometimes something of a wilful deceiver. The confessor has to take his measure of his man, and calculate the import of what he hears accordingly. This power of divining the facts of the case is quite as important as the knowledge of the principles to judge them by.

Lastly, besides moral theology and insight and tact and decision, the confessor needs some measure of personal holiness, not certainly for the validity of his absolution, but for the security of his direction. It must be borne in mind that the confessional is intended, not merely to withdraw souls from sin, but to lead them on to greater and greater good. It justifies the sinner and perfects the saint. But on this road of positive goodness, holiness, and perfection, he must prove an indifferent guide whose own steps and longing eyes are not at all set that way.

NOTE. — We so seldom hear a good word said for casuistry, that I willingly quote the following from a high and venerable authority in the University of Oxford: —

"It would be disingenuous to conceal my opinion that the art of casuistry has often been most unjustly decried. It has unfortunately been associated, owing to the peculiar treatment of it by certain Jesuit divines, with lax views of morality, and especially of the virtue of veracity; but the association is mainly an accidental one. Granted that duties may clash, . . . or that general rules may be modified by special circumstances, it is surely most important to determine beforehand, so far as we can, what those circumstances are, and, in the case of clashing duties, which should yield to the other. Now this, and this alone, is the task which 'casuistry,' or the attempt to 'resolve cases of conscience,' proposes to itself. Owing to the infinite variety of the cases which may be imagined and the endless complexity of the circumstances which occur in actual life, the casuist may not be able, to any great extent, to anticipate practical difficulties; but he can, at least, always deal with cases which have already occurred, nor do the limitations of an art seem to furnish conclusive reasons against the attempt to exercise it." — *The Principles of Morals*, by Fowler and Wilson, Part II. pp. 247–248.

Nelson, in his leisure moments, loved to study what should be done in possible contingencies which he imagined for a battle at sea. In this our great admiral was a sort of naval casuist. As for "certain Jesuit divines," the fact is that some Jesuits did say some foolish things, and Pascal invented for them many more.

ESSAY IV

THE CATHOLIC DOCTRINE OF LYING AND EQUIVOCATION

THERE is a question often put, and probably never answered in the negative: 'Can you keep a secret?' No woman certainly ever avowed that she could not. We all profess to know how to keep secrets: we all profess likewise to speak the truth: yet how to keep a secret in the face of an impertinent questioner, and still tell no lie to put him off, is a delicate moral operation that baffles many people's skill. There is one rough way of doing it, which I suppose is the common way. It begins by assuming that the essence of a lie consists in a violation of the hearer's right to the truth. Then the consequence is drawn, that where an enquirer has no right to know the truth about which he enquires, and an untruth is necessary to keep the truth from him, there an untruth may be told which will be no lie. "If all killing be not murder," demands Milton, "nor all taking of another man's property stealing, why should all untruths be lies?" I will not call

this doctrine un-Catholic, held as it is by many loyal children of the Church, but I submit that it is unphilosophical, and may be brought to bear bitter fruit in theology. For if truthfulness is a matter of strict justice and the hearer's right, and we have, as the best theologians teach, no strict rights against our Creator, where is the guarantee of the truthfulness of God in revelation?

Another way, amusingly described by Cardinal Newman, is the way of those who will have it through thick and thin, that all lies and untruths, and all manner of equivocation and lack of sincerity in speech, are radically wrong, extremely wrong and shameful; still that a man would not be man, if he did not tell a lie now and then at a hard pinch; and that the best thing he can do is to come out with the lie, and have done with it, and forget it, and rail louder than before against casuists and Jesuits, lying lips, and all who speak leasing.

Both these ways are objectionable. We must not lie to keep a secret, neither may we tell an untruth, for all formal untruth is lying. Are we then to use equivocation? Equivocation is a word formed from the Latin *æquivocatio*. Many good theologians writing in Latin have advocated what they call *æquivocatio*. English Catholic authors, treading in their

footsteps, and literally translating their words, have argued in favour of equivocation as being, in case of need, a lawful means for preserving what ought to be preserved secret. But English is unfortunately not the language of a Catholic people. Words mean, not what we would have them mean, not what the corresponding word means in the language of the Church, but their meaning is that which they commonly bear in educated English society. Now the ordinary educated Englishman takes equivocation to denote a practice which is certainly wrong, and carries all the guilt of lying, as, if being asked whether Antony is in the house, I privately press my foot on the ground, and say, 'No, he is not here,' meaning he is not in the cellar; or if I deny that I have any Spanish letters about me, understanding that such letters are not in my pockets, but in my portmanteau, which is lying beside me on the pavement. The answer *No* in these cases may be a lie, or it may not, but it is not saved from being a lie by such subterfuges as these, which are purely mental and confined to the mind of the speaker.

What ordinary Englishmen call equivocation corresponds to that which Catholic divines know as *pure mental reservation*, and that is a cowardly fashion of lying. Where *æquivocatio* is

mentioned with approval in a page of Latin casuistry, the word ought to be translated, *broad mental reservation*. To render it *equivocation* is to create confusion, just as much as if one should render the canonical appeal, *peto apostolos* 'I ask for the apostles,' or the old French, *entre chien et loup*, 'between a dog and a wolf.' On this understanding I venture to assert that the Catholic doctrine condemns, absolutely and under all circumstances, all lying and all equivocation.

And likewise all mental reservation? No, not all mental reservation. One form of that is lawful, when it is necessary to baffle an impertinent enquirer and keep a secret.

Mental reservation is an act of the mind, limiting the spoken phrase that it may not bear the full sense which at first hearing it seems to bear. The reservation, or limitation of the spoken sense, is said to be *broad* or *pure*, according as it is, or is not, indicated externally. A *pure mental reservation*, where the speaker uses words in a limited meaning, without giving any outward clue to the limitation, is, as I have said already, in nothing different from a lie, and is wrong as a lie is always wrong. Is then a *broad mental reservation* always right? May we amuse ourselves, trying the quickness of our friends' perceptions,

meaning less than we seem to say, and leaving them to guess the 'economy of truth' by some delicate hint thrown out thereof? Such sharp practice is by no means to be permitted promiscuously. Mental reservation, even on the *broad* gauge, is permissible only as a last resource, when no other means are available for the preservation of some secret, which one has a duty to others, or a right to oneself, to keep.

Here I must explain the Catholic doctrine concerning secrets. We distinguish *natural* secrets, secrets of *promise* (*secretum promissum*), and secrets of *trust* (*secretum commissum*). A natural secret is all a man's own private history, which he would not have made public, as also all that he discovers of the private history of his neighbours by his own lawful observation without being told, supposing the thing discovered to be one that requires concealment. If I find out something about my neighbour, and after I have found it out for myself, he gets me to promise not to publish it, that is a secret of promise. Lastly, if one man comes to another, as to a lawyer, or a surgeon, for professional advice, or simply to a friend, for moral counsel, and in order thereto imparts to him some of his natural secrets, those secrets, as they are received and held by the person consulted, are called secrets of trust. This latter kind of

secret is privileged above the other two. A natural secret, and also a secret of promise, must be delivered up on the demand of an authority empowered to enquire in the department in which the secret lies. A counsel cross-examining a witness would not be put off with the answer, 'I promised not to tell.' But a secret of trust is to be given up to no enquirer. Such a secret is to be kept against all who seek to come by it, except where the matter bodes mischief and wrong to a third party, or to the community, and where at the same time the owner of the secret cannot be persuaded to desist from the wrong. In particular cases it is often extremely difficult to decide whether this exception holds or not. But some cases are plain. If Father Garnet had known of the Gunpowder Plot under a secret of trust — and not under the seal of confession, which makes a secret supernatural, and absolutely inviolable — he ought certainly either to have turned the conspirators from their purpose, or, failing that, to have given information to the government.

Therefore a secret of promise is to be kept against all enquirers other than official. A secret of trust is to be kept even against official enquiries, under the limitations that I have laid down. The keeping of a secret of promise is an obligation at least of fidelity: that of a secret

of trust is matter of strict justice. Both are obligations binding under sin. It is a sin to lie, no doubt: but it is a greater sin, usually, to divulge your neighbour's secret.

The difficulty now comes round again, how to keep a secret against an impertinent questioner, without lying. The main art of keeping a secret is not to talk about it. If a man is asked an awkward question, and sees no alternative but to let out or lie, it is usually his own fault for having encouraged the questioner up to that point. A wise man lets drop in time topics of conversation which he is unwilling to have pressed. He is never the first to introduce such topics. It is said of the ploughman in Ecclesiasticus, that his story is of the sons of bulls — *enarratio ejus in filiis taurorum.* After all, cattle have no secrets, but men and women have. Of that class of persons whose profession lies in the way of hearing them, doctors, lawyers, priests, none would altogether like to hear it said of him: His stories are of his penitents, his clients, or his patients.

But there are unconscionable people, ἀναιδεῖς, who will not be put off, and who, either out of malice or out of stupidity, ply you with questions against all rules of good breeding. This direct assault may sometimes be retaliated, and a rude question met by a rough answer. But

such a reply is not always prudent, and would not unfrequently convey the very information required. Silence would serve no better, for silence gives consent, and is eloquent at times. There is nothing left for it in such cases but to lock your secret up, as it were, in a separate compartment of your breast, and answer according to the remainder of your information, which is not secret, private, and confidential. This looks very much like lying, but it is not lying, it is speaking the truth under a broad mental reservation.

"What news, my lord, from France?" some one asked of a cabinet minister. "I don't know," was the reply, "I have not read the papers." The story is Cardinal Newman's. Here the sense of the *I don't know* is restricted and reserved, internally in the mind of the speaker, and externally by the words added about the newspapers. It is a mental reservation of the broadest, such as no Pharisee could call a lie. Now suppose the reference to the papers omitted. It would still be very hard to call the *don't know* a lie. The reservation of official knowledge is still sufficiently apparent: no sensible man would expect that to be communicated by way of ordinary chit-chat. Above all, when a topic has been forced upon one, and questions put that admit of no

evasion, by an enquirer who has no right to ask, then surely any denial or disclaimer that may be elicited, however direct the form of words, must be qualified by the outward circumstances in which it is spoken. This qualification, unspoken, but not unsignified, will be, 'secrets apart.'

Indeed, this qualification may be said to go along with all human replies to human questions. But in nine hundred and ninety-nine cases out of a thousand, the facts of the position indicate that the value of the qualification comes to zero: there can or ought to be no secrets about the matter. "Porter, what time does the night mail leave for Paris?" "At a quarter to nine." "You mean, of course, *secrets apart?*" "Well, I do; but who dreams of secrets about the train service?" On my way to Paris I come across a garrulous Frenchman, who pesters me with politics when I want to sleep. I conclude there are no political secrets in that man's brain; if there are, he has no business to be so free with his tongue. But as I show a resolute unwillingness to talk politics, the reserve of *secrets apart* has an appreciable value in the *yes's* and *no's* which he contrives to wring out of me: how does he know that he has not to do with a confidential diplomatic

agent? This at least he ought to know, that a man who is honoured with the confidence of the government will not part with it to the first puppy who sets upon him to worry him, but will either hold his peace, or when that cannot be, will return an answer for which his interrogator shall be none the wiser. In other words, he will answer out of his communicable, and not out of his incommunicable knowledge. The qualification, *secrets apart*, should be borne in mind by persons who are in the habit of asking indiscreet and unwarrantable questions.

Dr. Johnson said: "I should have considered Burke to be Junius, . . . but Burke spontaneously denied it to me. The case would have been different had I asked him if he were the author: a man so questioned as to an anonymous publication may think that he has a right to deny it" (Boswell's *Life of Johnson*, ed. Croker, IV. 246). Sir Walter Scott considered that he had such a right, while he chose to remain the anonymous author of the Novels (*General Preface to the Waverley Novels*, 1829, pp. 21, 22, ed. Black, 1865). *The Spectator* for July 23, 1898, allows this right where there is question of other people's secrets, not where there is question of your own. The distinction seems arbitrary, and too favourable to busybodies. In practice the difficulty is to

decide when a secret is important enough to give the clause, *secrets apart*, a positive value. No general rule can be assigned. The clause is not available, and should not be presumed to hold, for the protection of any and every trumpery secret. We must not make mysteries of trifles.

But also it must be borne in mind that a question which would be unwarrantable, put by equal to equal, may be perfectly fair and proper in the mouth of a parent, or of a cross-examining counsel who has the support of a court of law. There are few secrets that one has a right to hold against every enquirer. Knowledge that is incommunicable here is communicable there: absolutely incommunicable knowledge is a rare possession.

Mental reservation is allowable only when we are driven into a corner by captious questions about a matter which we have a grave reason and a right to keep secret, and where we have no other escape. This doctrine will not justify the setting of false or equivocal statements afloat where no one has questioned you. It will not justify the practice of lying to children as such. But, of course, in meeting their demands, we may present the information in a childish dress, so that they may learn only that which a good and reasonable child

would wish to know. In replying to a sick person, I suppose a piece of news highly dangerous for him to hear might be treated as a natural secret. But I cannot comprehend the morality, nor, indeed, the wisdom, of inventing gratuitous fictions for the comfort of the sick. As for lies in jest, they remain lies, unless it be tolerably manifest that we are 'drawing the long bow.' Words may be explained away by looks or other outward circumstances, sometimes by the very grotesqueness or absurdity of the statement itself. Friend addressing friend does not mean all he says to be taken *au pied de la lettre:* it is part of knowing a man to understand his jokes.

It will add very much to clearness of notions in all this matter, to define wherein the essential wrongness of lying consists. What is there cleaving to a lie that makes it always wrong, so that one must never lie, no, not for worlds? A lie is made up of two elements, one in the utterer, and one in the hearer. There is the deception begotten in the mind of the hearer, and in the speaker there is the discord between what he says and what he thinks to be true, — not necessarily, be it observed, between what he says and what is true. Both these elements are evil; the former, the deception, obviously so. Human society cannot go on, if men are

to be allowed promiscuously to deceive one another. Then, no one likes to be deceived, and we are not to do to our neighbour what we would not have done to ourselves. The laws of good fellowship require that we should speak the truth to one another in ordinary circumstances, as they likewise require that in ordinary circumstances we should respect the life and property of our fellow-men. But to take life and to seize upon property is lawful in certain emergencies, in self-defence and for self-preservation, or with the sanction of authority. These exceptions stand very well with the well-being of society, or rather are required by it: the lives of brigands and assassins must not be sacrosanct as the lives of other men. No man is reasonably unwilling that, if taken red-handed, he may himself be slain. The law against deceiving our neighbour, so far as it is founded on the prejudice done to society and the annoyance of the person deceived, seems to admit of similar exceptions. Whoever has no reasonable objection to have life and property taken from him in certain circumstances, cannot reasonably complain of any hurt or inconvenience that he may suffer in being sometimes deceived. There is a well-known story told by the younger Pliny of the Roman matron Arria, who, having lost her son by sickness, and all

but lost her husband, used to tell the latter in his convalescence, when he enquired about the boy: "Oh, he has slept well; he has had quite an appetite." Then she would rush out of the room to conceal her tears. I will not vouch for the objective morality of these replies: they may or may not be justified as broad mental reservations. But they are much more easily justified, if the whole harm of lying consists in the hearer's unwillingness to be deceived, by saying that the sick man was not unwilling to suffer a deception rendered necessary by his state of health. The same doctrine would justify other speeches of a much more objectionable character. It would, in fact, contain the reaffirmation of the old Greek position, that deceit is a medicine and a drug, and may be administered, ἐν φαρμάκου εἴδει, especially by persons in authority, wherever they judge that it will work a wholesome effect, and wherever the person deceived is not unwilling, or at least ought not to be surprised or complain, considering the circumstances. But this would be to throw the door open wide to the whole crowd of official, officious, and jocose lies. Untruths told for a purpose to enemies, to children, to subjects, to servants; pleasant fictions to gratify a friend; hoaxes unlimited, where we think the victim ought not much to mind, — these will

be withdrawn from the category of lying, or will be registered as white lies and lawful.

Worst of all, if the whole harm of lying is in the unpleasant effect wrought upon the deceived hearer, or in the scandal and bad consequences to society at large, it is not clear that lying is impossible to God; and our faith, based on the divine veracity, is shaken to the foundation. God, as Master, might bid the deceived listener bear the mortification and shame of being duped. He might by His providence prevent any scandal or general bad consequences to society; or, as Sovereign, He might impose or permit such consequences, as He sends or permits a pestilence. The Lord of life and death, who commanded Isaac to be slain, and who daily "taketh away the spirit of princes," is not to be restrained from being a deceiver by the mere reluctance of His creatures, unless there be some element in the divine nature itself which makes it utterly impossible for God to deceive and speak false.

Undoubtedly there is such an element. It lies even at the root of the sanctity of God. God is holy in that, being by essence the fulness of all Being and all Goodness, He is ever true to Himself in every act of His understanding, of His will, and of His power. By His understanding He abidingly covers,

grasps, and comprehends His whole Being. With His will He loves Himself supremely. His power is exercised entirely for His glory — entirely, but not exclusively, for God's last and best external glory is in the consummated happiness of His creatures. Whatever God makes, He makes in His own likeness, more or less so according to the degree of being which He imparts to the creature. And as whatever God does is like Him, and whatever God makes is like Him, so whatever God says is like Him. His spoken word answers to His inward word and thought. It holds of God, as of every being who has a thought to think and a word to utter: —

> To thine own self be true,
> And it must follow, as the night the day,
> Thou canst not then be false to any man.

God's sanctity is in His being true to Himself. His veracity is a part of His sanctity. He cannot in His speech, or revelation of Himself, contradict what He really has in His mind, without ceasing to be holy and being no longer God.

But the sanctity of intellectual creatures must be, like their every other attribute and perfection, modelled on the corresponding perfection of their Maker. Holiness must mean

truthfulness in man, for it means truthfulness in God. God's words cannot be at variance with His thought, for God is essential holiness. Nor can man speak otherwise than as he thinks without marring the attribute of holiness in himself, that is, without doing wrong. And this is the real, intrinsic, primary, and inseparable reason, why lying, or speech in contradiction with the thought of the speaker, is everywhere and always wrong.

This is the simple reason assigned by St. Thomas Aquinas: —

> A lie is wrong in its kind, for it is an act falling on undue matter. For whereas words are naturally signs of thoughts, it is unnatural and undue that any one should signify by word that which he has not in his mind.

He admits as a secondary reason of the evil of lying, that: —

> Because man is a social animal, naturally one man owes another that without which human society could not be preserved. But men could not mutually dwell together, unless they mutually trusted one another as mutually declaring to each other the truth.

But when he faces the objection, that "the lesser evil is to be chosen for the avoidance of the greater; but it is less harm that one should engender a false opinion in the mind of another than that a man should slay or be slain:

therefore a man may lawfully lie to keep one party from committing murder and to save another's blood," — in face of this objection he falls back upon the main argument already alleged, and replies: —

> A lie is a sin, not merely for the damage done thereby to a neighbour, but for its own inordinateness, as has been explained. But it is not lawful to use any unlawful inordinateness to hinder the harm and prejudice of others. And therefore it is not lawful to tell a lie for the purpose of delivering another from any danger whatsoever. It is lawful, however, to hide the truth prudently under some dissembling.

I believe that this doctrine of the Angel of the Schools has never been departed from without danger to theology and to morality, to the one in the matter of the divine veracity, and to the other in the matter of officious lying. Never must any intellectual being, not even the highest and most exalted of all, be permitted to use signs in contradiction to his thought whereof they are signs. If for the keeping of a secret, and under sore pressure, a man may speak by his communicable knowledge alone, and ignore what he has of incommunicable knowledge, circumstances must outwardly suggest that reservation to a prudent listener. The whole man speaks, the situation speaks; the words must not be considered by them-

selves and in the abstract; they are a text to be taken in conjunction with the note and comment which accompany them. This annotated text, so to speak, answers to the thought of the author: there is then no clash of sign and thing signified, there is no lie. What is required is that the comment and reservation be not all inscribed within the mind of the speaker, but be legible outwardly; likewise, that the modifying clause be not resorted to without reason. The reservation must not be needless, and it must be *broad*, not *pure*. Thus are we to take St. Thomas's hint, "It is lawful to hide the truth prudently under some dissembling."[1]

[1] See *Summa Theologiæ*, 2^a–2^{ae}, q. 109, art. 3, ad. 1; and q. 110, art. 3, corp. and ad. 4. See, too, q. 110, art. 1, corp., where lying is accurately defined. The passages are in my *Aquinas Ethicus*, II, pp. 214–221.

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ESSAY V

SOCIALISM AND RELIGIOUS ORDERS

One curious change coming over men's minds in this country is the growth of a new regard for Religious Orders. This is due, not only to the Catholicising party in the Church of England, which has abolished so much of the blind bigotry of the Reformation, but also to an increased and increasing disposition to combine and co-operate and bear the fortunes of life in common. Religious Orders are thought in one way to have solved the problem of co-operation, and men are curious to study the solution which they present. Hence the modern novelist counts upon making one impressive chapter by a description of the interior of a religious house, a practice for which he finds precedent in Sir Walter Scott. For all who are interested in Communism and Socialism, the social aspect of a Religious community must also have some interest. I propose to say a little on the agreement, but more on the differences, between a Socialist commonwealth and a Religious Order. The differences, it

will be found, are all in the way of facilitating the workings of the latter, and relegating the former far away into the region of the impossible and chimerical.

The point of agreement between Socialism and Religious life is that in both economies the goods of life are in the hands of individuals for use and consumption only; all capital is held in common, and is administered either by the votes of the community, or by some individual, or individuals, acting in the name of the community. The Socialist citizen will have the dominion of the wages that he earns, or of the dole that is distributed to him, with this large limitation, that he must not invest his wages, or his dole, in any money-making concern for his own profit. The Religious has the use only, not the dominion, of what is assigned to him: he can only turn it to the supply of his own personal wants, on such scale as the custom of his Order allows, always a modest and somewhat frugal scale. The Socialist here has more liberty, but the large limitation mentioned is common to him and to the Religious. The Religious who does better work for his Order is not on that account better fed: whether the better-working Socialist is to be better fed is a moot point, and a difficulty for Socialism, whichever way it is

determined. The Religious lives where he is stationed by his superiors, and does the work that they assign him. How the Socialist will be got to work, what choice of work he will have, and what liberty of moving about from employment to employment and from place to place — nothing of all this is quite settled; but it is hoped that every individual will be allowed to choose his own work, and that individuals will choose their several occupations so wisely, and with such self-devotedness to the common good, that the work of the community will not suffer. Religious would not expect their public works to prosper, if they were thus left to the casual energy of individual members. Socialists may find it necessary, after all, to fall back upon some constraining central authority, which will assign the People their work, and oblige the said People to do the same.

The sources of wealth in a Religious Order are threefold. First, what individuals bring into the Order on entering it, or what falls in to them by way of bequest afterwards. This may be reckoned the principal source. Secondly, gifts from friends, usually for some special purpose, and that often of an ornamental nature, as for the decoration of a church or the erection of an altar. Thirdly, what is made by a sort of quasi-capitalistic production analo-

gous to the incomes of professional men. It must be borne in mind that no Religious Order or community is allowed to engage in trade, properly so called. But they teach schools, serve churches, preach sermons, attend hospitals, and render other ministerial services, for which they receive monied support.

A social State would be either one great trading community, or an aggregation of trading communities. Either way, its methods of finance would be quite dissimilar to those of a Religious body, and would be beset with difficulties of quite a higher order of magnitude.

The members of a Religious Order are all trained men, or trained women. Admitted first as postulants, and kept in that state sometimes for months, they then go through a novitiate of one or two years before they take the first vows of religion: then more years elapse before they make their final vows of profession. To begin with, no one joins as a postulant except of his or her own free will. Postulants are examined before they are admitted to the noviceship. Novices who have no mind to stay, go away. Novices who are unfit, are sent away. They who after the novitiate discover qualities unfitting them for their state of life, are released from their vows, and

depart. In some Orders it is reckoned that not above fifty per cent of those who enter the novitiate finally die in the Order. So difficult it is for human beings to resign their independent action, and coalesce in multitudes, not for a passing emergency — that is not unusual — nor during the pliant years of early life, for the young need support, but in all the vigour of their age and maturity of their judgment. A youth will not enter a Religious Order, certainly will not persevere through the novitiate, unless he be a person specially susceptible of religious influences. And these influences are kept at work all life long upon every member of the Order, by daily meditation, prayer, and solemn ritual. Without them, as unanimous experience testifies, life in the Order would be impossible.

But, it seems, no education is needed to be a Socialist.[1] Only an Act of Parliament or two, and we shall all change our natures. The individualism that has come down from father to son for centuries will suddenly vanish from our blood; traditions will be upset, preconceived ideas reversed, the river of national life will turn round and flow upwards.

[1] The Fabians, it must be said, are wiser on this point. They propose to educate the nation for years, and let us down into collectivism gradually.

Surely it is absurd to imagine that human nature can be thus completely changed. Socialism requires as a necessary condition complete suppression of self, abiding charity towards all our associates, and intense devotion to the public good. These virtues do not come naturally to a man even when he enters a religious order; still less would they do so in an atheistic or secular communistic state. Every member of a religious congregation, every student of ecclesiastical history, nay, every reflecting man, must see that such dispositions can only be acquired and retained by continuous mortification of our natural tendencies and passions. But constant mortification is made possible only by prayer and the grace of God. The commonwealth described by Mr. Bellamy or Mr. Gronlund would be the very last place where such abnegation would be likely universally to flourish. The goal of man's existence they hold to be temporal happiness; the good of life, pleasure and enjoyment. Constant self-sacrifice, we need hardly remark, is not a likely offshoot from such a stock.[1]

Religious 'brothers' are trained men: Socialist 'comrades' are wholly untrained to their peculiar mode of existence. Religious are volunteers, and the unwilling and the unfit drop out of their ranks: but Socialism, once established, will hold people to it, whether they like it or not. State compulsion will be to them instead of religious vows, and the State grants no dispensations.

Of the men and women you meet in any public place, not one in three is a fit and

[1] Father Michael Maher in *The Month* for January, 1891, p. 18.

proper person to be in a Religious Order, even if they had the will to join. Many have defects which unfit them: some few are unfitted by reason of their special type of gifts. The normal Religious finds guidance and strength in his superior's commands and the prescriptions of his rule. With such support he accomplishes good which he never could have done by himself. The members of Religious Orders, working together, insignificant in themselves, but mighty in combination, have been compared to those little diatoms that build up the coral reefs. But minds of a certain order of originality may require to work by themselves, untrammelled and uncontrolled, except by the fear of God and His law. The Church does not want all her children to enter Religion, even were the thing physically possible. And Religious men, giving advice about vocation, warn sundry peculiar and original minds off the ground, telling them: 'You are made to work on a line of your own:' 'You must operate on your own account, you are not the man to march shoulder to shoulder in a battalion.' These original spirits would be a great danger to Socialism. Properly they should be its leaders: but their 'comrades' would not easily admit them to lead. What they could neither lead nor accompany, they might readily turn

to destroy. Socialists seem sometimes to dip into Plutarch's *Lives:* they might find instruction there in the *Life of Alcibiades.* But perhaps the Socialist commonwealth will be too poor and sterile a soil ever to bear an Alcibiades or a Julius Cæsar. In dull mediocrity it will find its salvation. And dull mediocrity sets in where individual liberty and private enterprise vanish.

What saves individual liberty in a Religious Order, and keeps the members of the body supple and elastic in their work, is not so much the machinery of the constitution as the spirit in which the constitution works. The heads of the Order have ample powers of command, but are very slow to draw upon them. They hardly ever put out all their authority. They tread softly, handle gently, and are loth to proceed *pro imperio.* Rules are not applied without the unction of charity, and what theologians call *epicheia* (ἐπιείκεια), or regard for circumstances. Superiors and their elder subjects have grown up together from early youth, and know one another's ways better often than brothers of the same family. They have common interests, common ideals, and are on the easiest of speaking terms. No government is at once so gentle and so firm, so considerate towards the individual, and at the same time

so attentive to the general good, as the government of a healthy Religious body. That Socialism will be the reverse of all this, is written large on the brow of the Social Democratic Federation.

Spontaneity is of the essence of a Religious Order. Such Orders are approved and controlled by the Church. They may also be dissolved by the Church. But they are not instituted by the Church. No Pope, acting as Pope, ever founded a Religious Order. No General Council ever instituted one. They are not things prescribed by canon law. Every Religious Order is the creation of individual enterprise. Thus St. Francis started the Friars Minor, and St. Dominic the Friars Preachers: then Popes ratified the erection, and gave it the privileges of a Religious Order. So, too, the Orders are maintained by the voluntary enlistment of individuals. If no more novices choose to join, the Order simply dies out, and the Church flourishes without it. The Church takes no trouble to procure novices for an expiring Order. No one is ever sent into an Order by ecclesiastical mandate. It is otherwise when the vows of religion have been taken. The Church does take some care to see that Religious stand to their profession and observe their vows, until for

approved causes she dispenses them from the obligation. Religious Orders, then, have their origin in sheer voluntary association.

Voluntary associations of capital are also excellent things in their way. The State should behave to them as the Church does to Religious Orders — give them charters of incorporation, maintain their rights, hold their members to their obligations, but not force men into them. To quote Mr. Egmont Hake: —

> The great mistake committed by the votaries of Socialism is not to distinguish between co-operation and Socialism [*i.e.* between voluntary co-operation and co-operation universal and compulsory]. . . . The fundamental idea of Socialism is improved co-operation, and it is only because the Socialists cannot see their way to arrive at a system of free co-operation, satisfactory to all the members of the community, that they have fallen back on the desperate plan of substituting an artificial co-operation based on compulsion, and managed by bureaucrats. . . . Now, the advantages which government departments — or municipal administration — afford spring entirely from the principle of co-operation, and the drawbacks, difficulties, annoyances, and persecutions from the Socialistic [or government monopoly] principle.[1]

Workmen might do wisely, instead of impoverishing themselves by strikes, to start co-operative businesses in their own several

[1] *The Coming Individualism*, p. 111.

lines of trade, and work these in competition with their masters. The capital ought not to be wanting, with workmen's wages what they are now, especially if economy were practised in the luxuries of strikes and heavy drinking. The difficulty would be that which is the besetting difficulty of co-operative societies — the securing of competent managers. It would be necessary to pay high salaries to secure such. There is talent, however, in the market, and, given a proper salary, that talent should be obtainable. When a portion of the instruments of production come to be in the workmen's ownership, they will be able to put pressure upon the masters without their own life-blood and means of subsistence ebbing away in the effort.

One great and obvious difference between Socialism and Religious life we have kept for the last. Religious men have no wife and children. Being single persons, without family ties and private family interests, they are able to club together: their Order is their family, their equals in age are their brothers, their seniors are to them as fathers, and their juniors as sons. The property of the Order is their family property. Among married people you have confraternities, you could never have a Religious Order. The precedent of Religious

Orders, therefore, goes little or no way in favour of the feasibility of a Socialist commonwealth. We gather, however, some pretty plain hints from the pages of Socialist literature, that, though Socialists cannot do without children, some of them at least intend to do without the family; that though they must have women, they want no permanently wedded wives. Marriage shall not stand in the way of their collectivism. The morality of this procedure we may leave undiscussed. But we would propose one question: *Where is this type of Socialist going to have his home?* Not in the next world, for he believes in none. Not with wife and family, if the State is to cut off, or discourage to the utmost, such individualist appendages, and take his children away from him. The lodging-house or barracks in which he is quartered will be no home to him. The inmates will be strangers to the charities of Religious life. If he lives by himself, like Timon and Diogenes, he finds no home in that misanthropic solitude. He can hardly look upon the Guildhall as his home, or the House of Commons, or wherever be the meeting-place of the General Assembly. He is no longer a man, but a stone in the wall of a Government Office. He has no individuality and no home.

NOTE. — Socialistic settlements and experiments are, and always have been, wrecked on the common rock of ignorance of human nature. They are established on the baseless assumption that a number of heterogeneously collected people of various tastes, temperaments, and dispositions can be machined into conforming to a common ideal. In practice only the strong religious impulse and sentiment to be found in convents and monasteries can permanently achieve this result. The Hon. J. Garrard, a member of the New South Wales ministry, has just made a tour of the Socialistic labour settlements of South Australia. He reports that the experiment has not worked well in practice. The settlements, he says, started with much enthusiasm about mateship and brotherhood, but it is only in those where the theory of Socialism was abandoned, and private ownership in land conceded, that any success has been achieved. He instances a labour settlement at a place called Holder, where the industrious men "refused to carry the lazy men on their shoulders." It was at this place also that the single men rebelled, because they got only one ration, whereas each married man got a ration for each member of his family down to the youngest. This grievance led to a secession of the single men, who started a new socialistic colony — an Eveless Eden — of their own. But this also has proved a dire failure, for when Mr. Garrard visited it, he found most of its members "casting about for wives."

— *St. James's Gazette.*

ESSAY VI

MORALITY WITHOUT FREE WILL

THERE is a philosophy which resolves the universe into a process of divine thought flowing on irresistibly. In this philosophy everything happens *a priori:* everything that happens is a foregone conclusion, following necessarily upon what happened before: there is no room anywhere, whether in God or man, for what Catholic divines understand by free will. To be sure, this philosophy speaks of free will, meaning thereby the choice of a man of good character, acting according to his character, and not driven out of his ways of characteristic goodness by the force of temptation: such a one, so doing, is said to act up to his 'real self,' and thereby to act 'freely.' In all this, determinism lurks: for the good character, taking its free and unimpeded course, determines the resultant action, as surely and as masterfully as a river, unchecked by a dam, rolls on its course towards the ocean. All pantheism involves determinism. Plato, following Socrates, from first to last is a thorough determinist: he

always assumes that to know good is to do it: he never contemplates the case of a man looking away from the good that he knows, or failing to regard it steadily.[1] I refrain from all reference to St. Augustine and Pelagianism and Calvinism and Jansenism, to the effects of the fall, the corruption of nature, and *gratia victrix*. I deal with philosophical determinism only, without theological complications.

There is what is called 'hard determinism' and 'soft determinism.' The *soft* is as genuine determinism as the *hard* variety. You may wrap a millstone in a cloth, but it remains a millstone. *Hard* determinism, now gone out of fashion, makes the motion of the will like the motion of a material particle under mechanical

[1] "No one is willingly wicked: only through a bad habit of body and unscientific rearing does the bad man go bad." Plato, *Timæus*, 86 D, E; cf. *Laws*, 886 A, B. Aristotle, *Nic. Eth.*, III. 1114 *a* (c. vii.), corrects Plato: he admits that no man intends to form to himself a wicked character, but he says that man does choose to do acts which of themselves go to the formation of such a character; and he thinks that the character thus formed is irresistible. Aristotle seems to consider that man is free, not in the main purpose of life (βούλησις), but in the choice of means thereto (προαίρεσις), so far as this choice is not determined by some previously formed character (ἦθος), or habit (ἕξις), whether of virtue (ἀρετή) or of vice (κακία). I do not think that Aristotle supposes *all the choices* (προαιρέσεις) of any man to be determined by his character or habits. Aristotle, it seems to me, does stand for a limited play of free will, especially in the young and unformed.

forces, wholly determined from without, without the set and form of the will itself having any influence on the movement. If *hard* determinism were right, man would be like a weathercock, the sport of every wind of impulse that blew. But obviously man has something in him which often resists present solicitation. Men behave differently under the same temptation: one man yields, another holds out. There is something which carries a man above his surroundings, or haply sinks him below them. This is said to be 'character.' Character is partly inherited, partly acquired: partly a physical, partly a mental, property. If the *hard* determinist ignored character, — I am not so sure that he did, — the *soft* determinist at any rate makes the most of it. But character in his view is but the result of past circumstances, a sort of conglomerate of past circumstances. It is ancient circumstance, crystallised and preserved and still effectual. Thus, in the view of *soft* determinism, man is the creature of circumstances, present and past. He is led about by a chain of circumstance, many links of which were forged before he was born. No other view is possible upon the hypothesis of blind evolution. Man, then, in this *soft* determinist view, has the attribute of *spontaneity*, inasmuch as many of the things that he does are

not done against the grain; he is not reluctant to do them, not coerced, bullied, threatened, deluded, or deceived; he really wishes to do them, and has his eyes open, and is free from the compulsion of his fellow-men in the transaction. But though he has this *freedom from compulsion*, as it is called, he has not that *freedom of indifference*, in which free will is placed by Catholic divines. What he wills and wishes to do, he cannot but will and wish to do, with the character that he has. And that same character was made *for him*, not really *by him*. It is a natural growth of the circumstances of his past history. It follows the law of causation, or of invariable and unconditional sequence, as much as any other physical phenomenon, say the stratification of some particular rock.

Under much contradiction, the Christian Church has always taught the doctrine of free will. *Hard* determinism is heresy, and *soft* determinism is no better. The doctrine of the Church has formed the thoughts of men even outside her communion. We have learnt to think in terms of free will. If determinism shall pass from the lecture room to the market-place, our thought and our speech on all moral subjects will undergo a vast change. The change may be compared to the proposed

change from the present system of private capital to socialism. One has to think oneself into determinism as into socialism. In either case, more remains than might have been expected. The change is not so much on the surface of things as in the underlying principle. And first of what remains of our present moral system, when it comes to be worked on deterministic principles.

The ten commandments remain unchanged.[1] The list of virtues and vices remains unchanged. The ethical motives for virtue and against vice remain unchanged. The State continues to frame laws, commanding and forbidding the same things as before. The same conduct is praised and rewarded, or blamed and punished, as before, albeit not quite with the same intention. The portraits of the good man and of the bad man respectively have lost none of their external lineaments. The one is still self-controlled and self-denying, brave, loving, magnanimous, and just. The other remains a sensualist, cruel and cowardly, frivolous, idle, heartless, and untrustworthy. Nero is still bad, and Paul good. The exi-

[1] The determinist is likely to be also a pantheist. Pantheism, as it alters men's other relations to God, may also alter their worship of Him. But I leave pantheist worship to its own evolution.

gencies of human nature and of human society have not lost their value. The good and happiness of the individual, and the prosperity of the society to which he belongs, require of him the same conduct as heretofore. Goodness has not become less profitable, nor wickedness less detrimental and deplorable, now that both are recognised necessities. Wickedness is what it was in every respect save one; and the same deeds are wicked that were wicked. Goodness has lost only one of its attributes. Formerly the good man did what it befitted a man to do, having at the same time in the very act and circumstances of his well-doing the power to swerve from goodness: still he does the same things, but further it is to be noted that, with his character and circumstances, he cannot help doing them. And conversely of the wicked man, who is rightly enough pronounced by the determinist a dangerous, disgusting, and offensive animal. Ugly conduct fits in with the determinist hypothesis as well as ugly architecture.

We praise a flower, or a gun, or the 'points' of a horse. There would be no difficulty in praising in that way a man in whose conduct we recognised no free will. Still, he might be to us a grand fellow, a very useful creature. We might further encourage him with pro-

spective praise, as an inducement to serve us still better, much in the same way that a driver pats his horse and utters kind cries to it on a hard road. Such praise, however, and the corresponding blame, cannot be called *moral approbation*, and *reprobation*. This is more apparent in the case of blame. We blame stupidity, but we have a very different censure for malice. We are angry with stupidity, only as we imagine it to contain an element of wilfulness, or carelessness, which approaches very near to malice. To the determinist, a malicious offender could not but have been malicious in the past: there is no use being angry with him: the only thing to do is to devise and apply new motives in order to his cure. This may be done by instructing him: it may also be done by punishing him. Determinist punishment is always prospective, never retrospective. It is inflicted in prospect either of the amendment of the offender, by supplying him with new motives, which shall 'make him help' what he rightly pleads he 'could not help' before, or else of deterring the community from imitating such socially harmful conduct, as when we hang a man for murder. No consideration of suffering as expiatory of wrongdoing, no idea of retribution, must ever enter into the calculations of the determinist. The

determinist must adopt the Stoic profession of never being angry. Anger, says Aristotle, is a desire of vengeance: but there is no vengeance for the determinist, as there is no retributive punishment. He must punish with the calmness of a surgeon performing an operation: or if he assumes an outward mien of anger, it must be for the humane purpose of creating new motives in the breast of the culprit and backing up his infirmity. Believing that men are literally 'made better,' that is, are made to act better in future by reprehension and punishment, the determinist will not stint them of these beneficial applications. He will not spare the incapable, where he believes that punishment will amend them. He will not accept the usual distinction between incapacity and crime, as between an incapable commander and a treacherous one. To him it is all incapacity, 'crime' being incapacity of will, and 'incapacity,' commonly so called, being incapacity of understanding. He will punish the former more severely than the latter, only in so far as it appears to him more amenable to the motive of punishment. His distinction will be drawn between 'curable' and 'incurable' incapacity, whether of will or of understanding; and so far as the traitor is more responsive to punishment, or to bribery, than the blockhead,

he will consider him the better man of the two. The phrase, 'not merely a crime but a blunder,' will come well from his mouth. The Carthaginian practice of crucifying unsuccessful generals must have been stimulating to persons in command to do their best. A good precedent for determinists likewise is the execution of Admiral Byng, shot, as Voltaire remarked, *pour encourager les autres.* The determinist will fully enter into the definition given by Dr. Alexander Bain in his work on *The Emotions and the Will*, that "responsibility is punishability." The determinist will go on further to define *punishability*, 'a liability to painful inflictions, and thence to fear, as a motive to ensure better conduct in future.'

The proceedings of a man-eating tiger in a lonely Indian village, where with his huge shoulders he overthrows frail walls and doors at night, and devours the sleeping inhabitants, are fearfully destructive, but we should never call them *disgraceful.* They excite no moral reprobation: what else could such a creature be expected to do? You do not argue with a tiger: you shoot him, or get out of his way. But the doings of a thug, an assassin who kills as many men as a tiger, are called *disgraceful.* The reason of this, the determinist tells us, is because the assassin is open to argument; or

if the professed assassin is not, at least novices and aspirants to the craft are so open: by calling the assassin's doings *disgraceful*, *criminal*, *wicked*, you diminish the chance of assassinations in future. Assassins, in fact, can be talked to, though tigers can not; and talk is prophylactic. This is all very true. It is useful to talk of thuggism as 'disgraceful conduct,' and to kindle moral sentiment against murder. But is thuggism truly and really *disgraceful* when, to parody Watts's hymn, 'nature has made thugs so,' any more than the tiger's practice of preying upon human kind, once it has learnt that fatal trick, carries with it any stigma of *disgrace?* The tiger is not more thoroughly determined by causative agents than the thug, so the determinist must allow. The use of terms of moral censure in speaking of human criminals then is a mere *façon de parler*, adopted because such language is useful, not because it is true. It is an exemplification of the Platonic γενναῖον ψεῦδος, the "noble lie" told to the people by their rulers for purposes of government.[1] The sentiment of moral disapprobation has the ground cut from under it when it is thus explained. Were determinism generally accepted, this sentiment would disappear, and give place to the very different senti-

[1] Plato, *Republic*, III. 414 B.

ments of dislike and dread of a wicked man, exactly the sentiments with which we regard a 'man-eater' in the jungle.

With this there perishes the notion that moral evil is worse than all other evil, that sin is more to be avoided than any amount of suffering: the sentiment, *malo mori quam fœdari*, "death rather than moral defilement," becomes inane and foolish. Moral evil no longer dwells in a category apart from other evil. It is henceforth definable as *a public nuisance, open to treatment by motives.* And as motives are cheap, terms of reproach plentiful, and rods grow on every bush, this peculiarity of moral evil, that it is remediable by motives, is rather in its commendation. A small-pox patient in a crowded neighbourhood is a nuisance harder to deal with than the perjurer or the bigamist, and may set the determinist philosopher musing whether he be not on the whole the worse man. This is utilitarianism indeed, but not moral philosophy.

With the sentiment of moral reprobation and righteous indignation in regard to other men's sins goes the sentiment of remorse for our own. What we really believe we could not have helped, as matters stood, *e.g.* the loss of a piece of luggage in travelling, we regret indeed, and are annoyed at; but we do not feel any

remorse over it, not even though the lost trunk contained some precious article solemnly entrusted by a friend to our care. Such reflections as *I could not help it, It was not my fault*, are a salve against remorse. So long as we honestly believe that we took all the care that we possibly could under the circumstances, the poignancy of our regret never passes into remorse. A man who lays the unction of determinism to his heart, even *soft* determinism, should believe that in every circumstance of his past history he has done the best thing that he could possibly have done there and then; that he is the best man that, with his inherited character and under such circumstances as have been his, he possibly could have been, and so are all other men the best men possible; that in fact we are living in the best of all possible worlds, because it is the only world that could have been so far, though we hope there is a better time coming. If still the determinist feels remorse for some harsh word or deed of unfaithfulness, it is because his conscience is stronger than his philosophy. He ought to be, like the ideal sage of Stoicism, a man above remorse and incapable of sin. Above remorse, but not above regret for what was inevitable in the past but may perhaps be prevented in future.

The nonconformist conscience affords us occasional surprises of hatred of religion in the name of religious liberty. The determinist conscience will also conduct humanity into pastures new and strange. The study of the determinist will be, not so much 'what I ought to do,' as 'what I feel carried to,' 'what is consistent with my character under the present weight of motives.' Were I a determinist, I should feel a certain sense of degradation and helplessness, as though I were no longer master of my human acts, but were reduced to the *rôle* of a spectator of the goings on at the domestic hearth of my own soul. Instead of *I will*, I should be apt to say *I feel I must;* while *I won't* would subside into *just at present I can't.* And when the deed was done, my judgment on the sinfulness of it would take the form, *However deplorable, what else could I have done?* I think I should even cease to speak and act in the first person, and employ the third instead, as children do before they come to the use of reason and before their will is free.[1] In this habit of mind I should still retain *consciousness*, but old-fashioned *conscience* would have fled with the sense of remorse, of personality, of agency of my own,

[1] Like the Greek ὅδε ἀνήρ for ἐγώ.

and of that self-application which is a function of intelligence.

I believe, however, that the consciousness of the *ego* in man is a consciousness of free will, and carries conscience with it. But, like other truthful witnesses, this witness of consciousness to free will easily breaks down under cross-examination, and then goes discredited. It is a witness to the *fact*, τὸ ὅτι, of free will, not to τὸ διότι, or the *how*. Time, space, self, free will, simple things enough as common experience presents them,[1] become a perplexity and a puzzle when we try to draw them out scientifically. I have no purpose of doing so. So far as I may theorise on the subject, I should say that an act of free will is not a reaching out to the absent, but a clutching and sustaining of something already present in consciousness, — an actuation, endorsement, and personal acceptance of some affection that has arisen in the mind spontaneously by the necessary workings of causation. *The*

[1] Did ever any catechist find it necessary to tell any child what free will meant?

"One of the first experiences of an infant is that of his willing and doing; and, as time goes on, one of the first temptations of the boy is to bring home to himself the fact of his sovereign arbitrary power, though it be at the price of waywardness, mischievousness, and disobedience" (Newman, *Grammar of Assent*, p. 66, ed. 1895).

spontaneous is necessary. In other words, *soft* determinists, who admit nothing beyond spontaneity, are true determinists. Free will is something beyond spontaneity.

It remains to study the effects of determinism on the 'plain man.' The plain man may profess determinism as some profess Christianity, without its having any appreciable effect upon his conduct. He may be a determinist when he opens a book, and a vigorous assertor of free will in his business hours and his ordinary conversation. I am thinking of the plain man when he becomes a practising determinist. A whole nation may agree some day to teach morality independently of religion. Up to a certain point the thing is possible, — I do not say possible in the concrete, but theoretically and in the abstract possible, — in so far as ethics are a science in their own right, distinct from theology. When ethics are thus adopted, no longer as a mere speculative study, but as the sole guide of action, it will become a serious question for school authorities whether they shall teach determinist ethics, and hazard the effect of such teaching upon the minds of the million. It is to be feared that the effect would be the sending out of a multitude of human beings, pretending to be determined

by 'character,' and really having no character, because they never use their wills as their own, — young men and women of an emotional, passive temperament, drifting about under every wind of impulse and every breath of sensational excitement. Most of these *soft* determinists, to borrow a metaphor from Plato, would prove mere stingless drones, their own worst enemies. Some of them, however, would develop cruel stings; and now and then a *soft* determinist, grown into what Plato calls "a walking drone with a sting," would commit a crime big enough to amaze the world.[1]

But are not Orientals generally determinists, and have not great men and great empires arisen in the East, and that under the conscious influence of determinist and fatalistic principles? No doubt. But the great men and empire-builders of the East were determinists and something more: they were strong theists. They believed that they had a mission from Heaven to go forth and conquer. They were men of prayer and prophecy.

[1] "These winged drones have been fashioned by Providence all without stings: but as for those drones that go about afoot, while some of them are stingless, others have got awful stings. For the former sort is reserved the life of a tramp and the old age and death of a pauper; but of the number of stinging drones are all who bear the name of belonging to the criminal class" (Plato, *Republic*, VIII. 552 C).

They had the strength of religion, albeit a false religion, at their back. They were deterministists and fanatics to boot. And thus much of the great men of the East. But it may be doubted whether the mass of Oriental populations have not lost in vigour by their determinism, degenerating into apathy, indolence, and submission to preventable calamities, whether visitations of nature or the tyranny of princes. Western determinism, prompted by a belief in pantheistic evolution, will derive no support from any religion that can stir the soul. It will be a gloomy, godless, mechanical affair.

ESSAY VII

THE VALUE OF SENTIMENT IN ETHICS, AN ILLUSTRATION

THERE exist a number of societies having for their object the bringing about of legislation to prohibit entirely the use of the knife, or of any other painful application, upon living dumb animals by way of experiment for the advance of biology. The most powerful is the London Anti-vivisection Society, which has its offices in Sackville Street, Piccadilly. This society has issued a flood of pamphlets, of varying degrees of merit, in support of its cause. The debate is of interest to the medical student, also to the moralist and political philosopher. Speaking in the latter capacity, I see three questions arising for solution. The reader must not complain if to these questions I return only partial answers. I am not dogmatising, but enquiring. I wish the reader to use his own mind along with mine.

A. Is vivisection wrong? I answer: Not intrinsically and absolutely wrong, nor dare I say that it is ever wrong, but there are argu-

ments against its being always right. These arguments I produce for what they are worth, without pronouncing on their value.

B. Is it within the competence of the State to forbid vivisection? I say: Yes, it is.

C. Should the State forbid vivisection? All I have to reply is an hypothetical negative. The State should not forbid vivisection, if by vivisection there is hope of ascertaining, and without vivisection there is no hope of ascertaining, facts of importance for the advance of medicine and surgery; or again, if vivisection is really necessary for training medical students. Beyond this hypothetical negative I will not go. Whether this hypothesis is verified or not, it is for the medical faculty alone to decide, not for laymen, however many medical treatises they have plodded through.

A. I presume that it is not wrong for man to *arise, kill and eat* (Acts x. 13) the inferior animals. I do not wish to argue with the man who holds that meat diet is sinful. I presume again that the lower animals, such at least as man is able to subdue, are by nature the slaves of man, φύσει δοῦλοι, as Aristotle says. Otherwise, I fail to see how man can be justified in killing them for his food. The essence of slavery consists in this, — that the slave is not his own, but another's: he does not exist for himself, but

is wholly referable and referred to the will and convenience of his master. In the juridical order, he is a *thing*, a chattel, a piece of property, or, to use a term which I have elsewhere employed, *heterocentric*:[1] whereas a person, being *sui juris*, existing (under limitations) for himself, and not being the property of any other, I have called *autocentric*. Greek philosophy and Roman law and, in a certain age, the common consent of mankind held that one man could be another man's *slave* in this full sense of the word. If the master killed his slave, cut up his body, and threw the flesh to feed the lampreys in his fish-ponds, he was not in excess of his legal rights, although he outraged moral sentiment, which in every age has protested against carrying legality in this matter of slavery to all lengths. The slave had no *rights* against his master, and could suffer no *wrong* at his hands. He was not a fellow of the society, of the πόλις or *respublica*, to which his master belonged.[2] As for *human society*, either there

[1] In the biological order a brute beast is not a *thing*, but a sentient nature. No one for a moment would incline to Malebranche's theory, that brutes are mere automata. Many words bear many various meanings, according to the antithesis in which they are used. Thus, *nature* has several meanings in opposition to *art*, to *convention*, to *cultivation*, to *grace*. A dumb animal is a *thing* in contradistinction to a *person*, not a *thing* as a stone is a thing, devoid of life and feeling.

[2] Yet, in Roman law, by what seems an amiable inconsis-

was no such thing, or it consisted only of freemen. Such notions could be in vogue only under very imperfect conditions of humanity and morality. As morality progressed, the slave's condition was improved, first practically, then also legally. In fact, he ceased to be absolutely and thoroughly a slave. Finally Christianity invented the distinction between the living body of the man and the labour of the man: the master, it was said, was master of all the labour of the slave, he was not master of the body and soul of the man. He could not rightfully kill him, or strike him otherwise than in just punishment, or outrage him, or prevent or compel his marriage, or control his religion. In all these and other particulars the slave had rights against his master. Only in this modified sense would Christianity ever recognise slavery. Such slavery was slavery, as Aristotle and Cato knew slavery, no longer. The slavery of the Aristotelian φύσει δοῦλος perished in the recognition of a common human nature, *one Lord, one faith, one baptism, one God and Father of all* (Eph. iv. 5, 6).

To kill a living creature at your discretion, and by the same discretion to use that crea-

tency, the slave was a member of the *familia:* he might in an extraordinary case even be the heir: and if of the *familia*, then (logically) of the *respublica.*

ture's flesh for food, is the strongest evidence in practice (or *in actu exercito*, as the schoolmen speak) that you regard that creature, not as an associate or ally or friend, not as one that can stand in any legal relations with you, or has any right to withstand you, but simply as one entirely to be referred to your use and convenience, as something given over into your hands as property, and existing for you — in other words, as your *absolute slave*. The Roman who threw his slaves to the lampreys was rightly regarded as carrying the doctrine of slavery to all lengths. Every butcher's shop and shambles proclaims that dumb animals, even some of the noblest of them, are the absolute slaves of man.[1] Nor will this judgment ever be reversed by any discovery of a common specific nature between man and even the highest of dumb animals. Stories are written of the 'intelligence' of animals; but, for every instance of what is called intelligence, a hundred might be recorded of their downright stupidity. The lowest savage can be taught to read, — even children born deaf, dumb, and blind can be taught, but neither elephant nor ape.

The death of sheep and oxen in our shambles, though rapid, can hardly be altogether painless.

[1] I suppose the only reason why we do not eat dog or monkey is because beef and mutton are so much better food.

But for centuries the animals whom man required to eat had to be hunted on the prairie, and killed by inches with imperfect weapons: still it was right even so to kill them. Man, their master, had need of them, and took them even at their pain. Nor is hunting quite obsolete in English counties. I do not know how many anti-vivisectionists, gentlemen and ladies, are to be found in the saddle. One form of hunting is fishing. Owing to their comparative inaccessibility, the death that man deals out to water-living animals is almost always a painful one. It makes my heart bleed to read how whales are killed in the whale-fishery: how the calves are caught and beaten till their dams come up, responsive to their cries, and then the latter, too, are harpooned: but man needs blubber and oil and whalebone, and ladies will have sealskin jackets, for which purpose two hundred and fifty thousand seals were slaughtered recently (*Daily Mail*, April 21, 1902); and the moralist cannot say nay. To come now to vivisection. I have written elsewhere[1] something to this effect, that if experiments, often necessarily painful, on living dumb animals have yielded, and are still yielding, valuable results, otherwise unattainable, for the treatment of human maladies, no reasoned

[1] In my *Ethics and Natural Law.*

considerations of moral science can forbid such experiments, yet so that in our quest after knowledge we be, as far as the end in view will allow, mindful of mercy. I do not see how any one is to deny this carefully guarded statement, unless he is prepared to forbid hunting and fishing and many other things in the world besides vivisection. Death and pain to inferior animals for man's use and benefit is one of nature's laws. It is a mysterious law, as all is mysterious that involves the great mystery of evil. We might wish it otherwise, we cannot deny it, we cannot ignore it, we are fain to act upon it. Such is the subjection, yea, the natural slavery, of the irrational to the rational.

It is the aim of science rather to regard things in themselves than the associations of our ideas. We associate the two ideas of slavery and cruelty; and any one who advocates any form of slavery, we take to be an advocate of cruelty. But there is no cruelty in the enforcement of the natural service of brute to man. Cruelty is a wayward, passionate, unreasoned thing. But the order of nature is a rational order. Whatever it carries is regulated by reason, and serves a definite, proper purpose in the universe as a whole. Man *is*, because he subordinates the

existence of other animals to his own, nor can he exist otherwise. He cannot afford to recognise the lower animals as his compeers, and treat them as he is bound to treat his fellow-men; and in point of fact they are not his compeers, but immeasurably below him. He may have his pets and favourites among them. A favourite horse or dog is screened with special care from all hard usage. But the favourite remains a slave. Even if he could be emancipated, his individual emancipation would not involve that of his race. There is no cruelty about any subjection, however absolute, provided it be natural. As it is natural, it puts ruler and ruled each in his right place, and makes for the good of both, according to the well-known argument of Aristotle in the first book of his *Politics*. Aristotle's mistake there, so far as he can be said to be mistaken, lies in exaggeration of the difference between one favoured race of mankind and the rest. The mistake of the advocates of 'animals' rights' lies in ignoring the superiority of man over brute. The brute, I repeat, stands to man in the relation of the φύσει δοῦλος, the born slave, to his master. Not on that account — I should say, all the less on that account — may he be treated with cruelty. But he may be hunted and run down

to weariness, wounds, and death to appease man's hunger; aye, and vivisected, too, if by vivisection alone man can learn the secret of overcoming disease and saving human life. Therefore I have said that vivisection is not absolutely wrong, inasmuch as in at least one conceivable and possible case vivisection would be justifiable.[1]

Argued on universal, high *a priori* grounds the indictment against vivisection appears to me to break down. On the humbler ground of observation and statistics, the publications of the London Anti-vivisection Society argue, more plausibly, that vivisection is attended with terrible pain to dogs, horses, and other victims of experiment; that much of this painful practice is useless; that probably it might all be replaced by more careful dissection of the dead and more assiduous walking of hospitals; that the human subject is in many subtle but vital points so unlike the lower animals as grievously to endanger in practice any conclusion drawn from the latter to the former. Were these allegations proved, — I do not say that they are, — but were these allegations proved, vivisection might assume a new aspect in the eyes of the

[1] What if the operation, now so common, for *appendicitis* could have been learnt only by vivisection? Would it not have been worth learning, and lawful to learn, even at that price?

moralist. Instead of being part of the service that other animals must submit to render to man, their lord and master, because he has need of them, some of the vivisection that goes on might turn out to be no better than a pompous and pretentious form of cruelty to animals, to be judged as all cruelty to animals is judged. Cruelty, for present purposes, may be sufficiently defined to be the wanton infliction of pain. Here, then, recurs the question, so often asked in our hearing, a question which has perplexed many a modern casuist and father confessor, and for the solution of which you turn to old books in vain: *Is it a sin to be cruel to animals?*

When they hear a question put, simple and ignorant people (also malicious people sometimes) are apt to cry for a plain answer, yes or no. On the other hand, people who have thought most about the question are the least forward to answer plain yes or no in the ears of the simple, or haply of the malicious. I will not say that it is a sin to be cruel to animals or that it is no sin. I will bring forward some considerations to help any one to make up his mind who has not done so already. And first we will discuss the following passage from St. Thomas (*Summa Theol.* 1^{a}–2^{ae}, q. 102, art. 6, ad. 8):—

Man may be moved by reason, and he may be moved by sentiment. So far as motives of reason go, it matters not what man does with regard to brute animals: because all things are made subject to his power by God, according to the text, *Thou hast subjected all things beneath his feet* (Ps. viii.); and from this point of view the Apostle says that God has not care of oxen (1 Cor. ix.), because God asks no account from man what he does with regard to oxen or with regard to other animals. But looking at the motive of sentiment, we find that man has feeling even for the lower animals. For since the sentiment of pity arises on account of the afflictions of others, and even dumb animals come to feel pain, the sentiment of compassion may arise in man even for the sufferings of animals. But it is obvious that one who is exercised in the sentiment of compassion for animals is thereby better disposed to entertain the sentiment of compassion for men: hence it is said, *The just regardeth the lives of his beasts, but the hearts of the wicked are cruel* (Prov. xii.).

The distinction here drawn between reason and sentiment is important to the moralist, as I will presently show. St. Thomas apparently denies that reason, apart from sentiment, has anything to say against cruelty to animals, but I should be far from ascribing to the Angelic Doctor any such opinion. We must explain his words in one place by considering what he says elsewhere. Cruelty is wanton and irrational behaviour: such behaviour cannot be according to law, for "the rule and measure of human acts is reason" (1^a–2^{ae}, q. 90, art. 1).

Any silly, outrageous conduct comes near to being sinful conduct. God will ask an account of man for all irrational behaviour, and consequently for all cruelty, to whomsoever shown. Again St. Thomas argues the wrongfulness of lying from its being "an act falling on undue matter," words being used in opposition to the thought which they are meant to set forth (1^a–2^{ae}, q. 110, art. 3). May we not, therefore, contend that cruelty to animals likewise is an act falling upon undue matter, animals being made subject to man for his use and benefit, not for his whim and caprice? Such cruelty is an abuse of the noblest work of God in the visible order: such abuse can hardly be guiltless. What, then, are we to think of the reckless felling of trees? There is need of caution in this argumentation, and I wish to proceed tentatively, suggesting, not determining.

There is one argument of reason, however, which I think does go some way to suggest a duty *per se* of sparing the higher animals any considerable reckless infliction of utterly needless pain. It is this: As God is to man, so is man to dumb animals, a sort of little god in their midst. They exist for him, as he for God. They have no strict rights against him, as he has no strict rights against God. He is a mystery, to them incomprehensible; and God is to

him a mystery, above his comprehension. But of God it is written: *Thy power is the beginning of justice*; *and because thou art Lord of all, thou makest thyself gracious to all: thou being Lord of power, dost judge with tranquillity, and with great consideration dost thou dispose of us* (Wisdom xii. 16, 18). God may expect us to take this His consideration and forbearance in our regard for some pattern of our conduct to the animals whom He has appointed to serve us. Though the parable of the unmerciful servant (Matt. xviii. 23–33) does not directly inculcate kindness to all sentient nature, yet it well "may give us pause."

The value of sentiment in ethics might furnish a theme for a subtle and interesting dissertation. I have never seen the theme handled adequately. Sentiment is not conscience, for it does not promulgate and proclaim law. Conscience may err in the individual man, but sentiment may err still more easily. It is less rational, less imperative, not so safe and masterful a guide. Conscience may even rise up against sentiment and proclaim it foolish. The sentiment of honour inculcated duelling, which conscience condemned. Christianity was preached in the face of the sentiment of the Roman world. Sentiment would sometimes punish in excess of right, *e.g.* class sentiment, as shown in the sen-

timent of the sanctity of property in the propertied classes: at other times sentiment would screen the guilty, 'for he was a brave fellow.' Sentiment is partly natural, and above the varieties of time and place, *e.g.* the sentiment of modesty; partly conventional, local, temporal, as appears in different determinations of the requirements of modesty, *e.g.* the veiling of women in the East, and the objection of some races to sitting cross-legged. The growth of sentiment against vivisection therefore is not enough for the moralist at once to pronounce vivisection to be wrong. Yet from an ethical standpoint, sentiment, whether it be natural and universal, or whether it be no more than the convention and peculiarity of the community and age in which one lives, is not a thing lightly to disregard and treat with scorn. There is a frame of mind stigmatised by Aristotle as θηριότης, a readiness to trample on the feeling and sentiment of the society in which one lives. There is no harm, when a man dines alone, in his sitting on the table and dispensing with knife and fork. One might even find company in which such behaviour would give no offence. But so to behave in any ordinary dining room would pain and insult the guests, and that would be a sin. It is sinful, so all theologians say, to give one's neigh-

bour annoyance without any proportionate reason for so doing. It is a sin against charity, an offence against what economists call 'social virtue.' Not an absolute deference, but a large measure of deference to the sentiment of the society in which he lives, is the bounden duty of every man. The sentiment of tenderness to dumb animals is growing apace, too fast for medical students or casuists to ignore. That it has already grown so strong as to render vivisection an outrage upon public sentiment and a sin against social virtue, is more than I would affirm.

No wise moralist would wish to carry out the Stoic programme, to cast out all sentiment in the dealings of man with man, and live by reason alone. But, as the quotation from St. Thomas points out, to tread down the sentiment of pity for animals would be to weaken that same sentiment in its exercise upon the ills of human kind. We may fear the effect upon the moral character of the vivisector, and still more of the young students who witness his operations, — fear lest they grow hardened to cruelty, and come to try experiments on patients of the more helpless sort of their own species.

B. I make no doubt that the State is competent to forbid vivisection. To cut up animals

alive is not such an indefeasible right of humanity as cannot be abridged. The monarchical, paternal government of former times, which claimed to be judge of whatever was for the good of the people, in the exercise of its discretion might abridge it. The modern democratic State, which claims to be the impersonation of the will of the people, might abridge it: surely the people need not vivisect unless they like, and may definitively resign whatever right they have in that direction. Only, one would wish to see vivisection, if it is to be abolished, abolished by a crushing majority of wills against it, not otherwise, not by any 'snap division': nor is it likely that any modern government would abolish it unless the nation were practically unanimous in desiring its abolition.

C. Should the State forbid vivisection? To this question my answer has already been given. The State should not forbid vivisection, if —

(*a*) vivisection leads to results, valuable in medical science for the cure, alleviation, or prevention of human maladies, or the training of medical students;

(*b*) and these results are unattainable otherwise than by vivisection.

One would like to see, in the interest of fair play, a Vivisection League founded to match

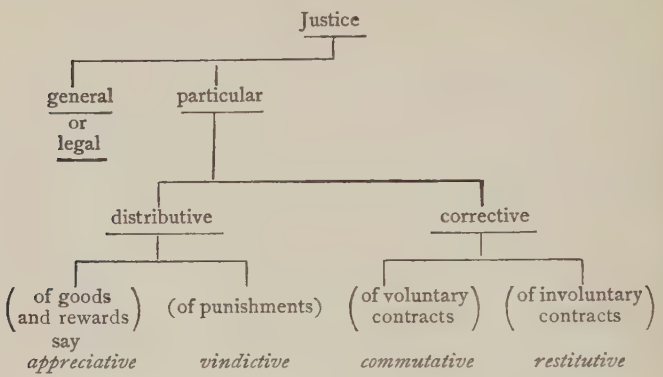
the London Anti-vivisection Society. If that league would accept the advice of a humble outsider, they would avoid arguing the case on moral grounds at all. The league should confine their publications to the medical and utilitarian ground, showing that, if vivisection is to be entirely forbidden, medical science and suffering humanity must inevitably be the loser. I have spoken of 'publications': but one publication of thirty pages, clearly and irrefragably establishing the medical necessity of vivisection, would be sufficient and all that is desirable. A word also to anti-vivisection societies. They would do well likewise, I think, to eschew further diatribes on the immorality of vivisection. Many of their moral essays in this direction are lamentably ill argued, and only prejudice the reader, who knows anything of ethics, against their cause. The fact is, no humane person wants to vivisect, except inasmuch as he considers vivisection indispensable to the progress of the healing art. On that point let issue be joined.

VIII. OCCASIONAL NOTES

A. THE ARISTOTELIAN DIVISION OF JUSTICE

In the Nicomachean Ethics, V. ij. 12, 13; iv. 1, Justice is divided into *general* and *particular;* and *particular* justice again is divided into *distributive* (διανεμητική) and *corrective* (διορθωτική). The term *commutative justice* is not found in Aristotle. Where post-Aristotelian authorities speak of *commutative justice*, Aristotle would have said *corrective justice*. But, as Sir Alexander Grant observes (vol. I. p. 112), "The term 'corrective justice' is itself an unfortunate name, because it appears only to lay down principles for restitution, and therefore implies wrong:" whereas Aristotle means it to apply to all contracts, as well *voluntary* contracts as those which he calls *involuntary*.

If we are still to hold to the name *corrective justice*, we may do well to subdivide (though Aristotle does not) the virtue so named into *communtative justice*, concerned about *voluntary* contracts, and *restitutive justice*, concerned about *involuntary* contracts. Thus we have the following *schema* of Justice.



The reader will not fail to observe the difference between *vindictive* and *restitutive* justice. The former carries *punishment* on public grounds; the latter awards *compensation*, making up the pecuniary loss of the individual sufferer. A robs B of five pounds: *restitutive* justice gives back the five pounds to A out of B's pocket; *vindictive* justice sentences A to a month's imprisonment with labour. *Vindictive* justice is the affair of the State; *restitutive* justice, if not provided by the State, may be enforced by the wronged individual. The term *vindictive justice* must not be taken to imply that the main end of civil punishment is vengeance or retribution.

B. THE SIGNIFICANCE OF TYPES IN THE THEORY OF MORALS

There are men potent at refutation, but narrow and near-sighted; men who consider anything hazy and indistinct to be, not imperfectly known, but absolutely unsubstantial and unreal, — taking for clouds the faint, far-off outline of the Delectable Mountains of highest truth. Against such men I feel quite unable to set forth syllogistically a surmise that long has haunted me of an unconsidered ground of morality. I will state it, though I would not undertake to defend it against a captious antagonist. There is a symbolism pervading all nature, the lowest and most trivial things being types of higher things, and they of things still higher, and so by a hierarchy of types up to the highest mysteries of Godhead. This secret was let drop by One who knew all. The habitual employment of parables in the gospel becomes to us an incidental lesson to look for types and allegorical meanings in all the processes of nature and in all human conduct. Side by side with the literal meaning of the Bible runs the mystical or typical sense, often the more important of the two, as in the Canticle of Canticles, or Song of Solomon. Cardinal Newman tells

us how this principle of interpretation struck him.

> The broad philosophy of Clement and Origen carried me away. . . . Some portions of their teaching, magnificent in themselves, came like music to my inward ear, as if the response to ideas which, with little external to encourage them, I had cherished so long. These were based on the mystical or sacramental principle, and spoke of the various economies or dispensations of the Eternal. I understood these passages to mean that the exterior world, physical and historical, was but the manifestation to our senses of realities greater than itself. Nature was a parable. . . . The visible world still remains without its divine interpretation (*History of my Religious Opinions*, pp. 26, 27).

Now for the bearing of all this upon ethical theory. Certain actions are wrong, because in them some type is violated, some sacred symbolism outraged, and the dishonour done to the type redounds upon the antitype or thing typified. Such I conceive to be the radical reason of the grievousness of sins against purity. There are hygienic motives for that virtue, as there are for abstinence and sobriety. But the hygienic reason for purity is never the whole reason: it does not cover the entire ground and matter of the virtue. It is, I suppose, possible, however hazardous it be for youth to make the attempt, yet, I suppose, it is possible to sin wisely, to set at nought some at least of the manifold applications of the pre-

cept, 'Thou shalt not commit adultery,' and yet survive sound of limb to length of days. The hygienic reason, closely touching as it does both the individual and the race, still is not the principal reason for purity. It fails to account for the peculiar sacredness of the precept, and the damning wickedness of all serious violation of the same. It is not so very important as all that, to have a reverent care of our health. By heroic exercise of the love of God and of his neighbour, a man may wear out his body more speedily and more ruinously than by a life of dissipation. The mischief and malice of such a life is not simply its unhealthiness, or its undoing of character, or even its uselessness or injury to the race, but further its offending against the symbolism of things mighty and holy. This surmise and suspicion and inkling I leave to the reflective higher student.

C. THE THEORY OF VALUE

Delivered from the meddling and muddling of Ricardo and Karl Marx, the theory of value is a simple thing enough. Value — I mean value in exchange, or market value — varies jointly with two elements — social demand and difficulty of procurement. The more clamorously society cries for a thing, and the harder

the thing is to procure, the higher market value the thing will bear, provided it be matter of exchange at all. A thing in social demand is not necessarily difficult to procure, as water.[1] A thing difficult to procure, a live badger, for example, is not necessarily in social demand. These two distinct elements, social demand and difficulty of procurement, are the determinants of market value. And they alone determine it, labour or no labour.

Difficulty of procurement, as a determinant of value, is not to be identified with the laborious expenditure of much brute force. Herrings are cheap, notwithstanding the heavy labour of a fisherman's life. From the standpoint of the market, herrings are not difficult to procure. Besides bodily labour, an object of value often involves what is more difficult of procurement, — skill and deftness of hand, ingenuity, the labour of the mind, genius. Genius is valued, not because it comes into operation by toilsome effort, but because it is a masterful and rare gift. 'Genius is difficult to find,' and 'genius does its work with difficulty,' are two different propositions. The former is true: the latter, on the whole, is false. The former proposition, anyhow, not the latter, shows the reason why

[1] Social demand bears on difficulty of procurement inasmuch as, where the supply is limited, men crowd one another out.

a work of genius commands the intelligent market. It is not true that the high price of such a work is recompense for the years spent by the author in education, a sort of refunding of his school pensions. The public is profoundly indifferent whether he ever went to school at all, or whether his pensions were paid when he was there. It appreciates his work purely as a thing desirable, not easily come by, *i.e.* not easy for the purchaser to come by, whatever it cost or did not cost the producer. Again, it is not true that property is valuable in the market formally and precisely inasmuch as it is the embodiment of bodily labour, or in Karl Marx's quaint phrase, inasmuch as it contains 'labour-jelly.' 'Labour-jelly,' as such, is not in social demand; and bodily labour, of which alone Marx seems to take account, is but one item in the sum total of difficulty of production.

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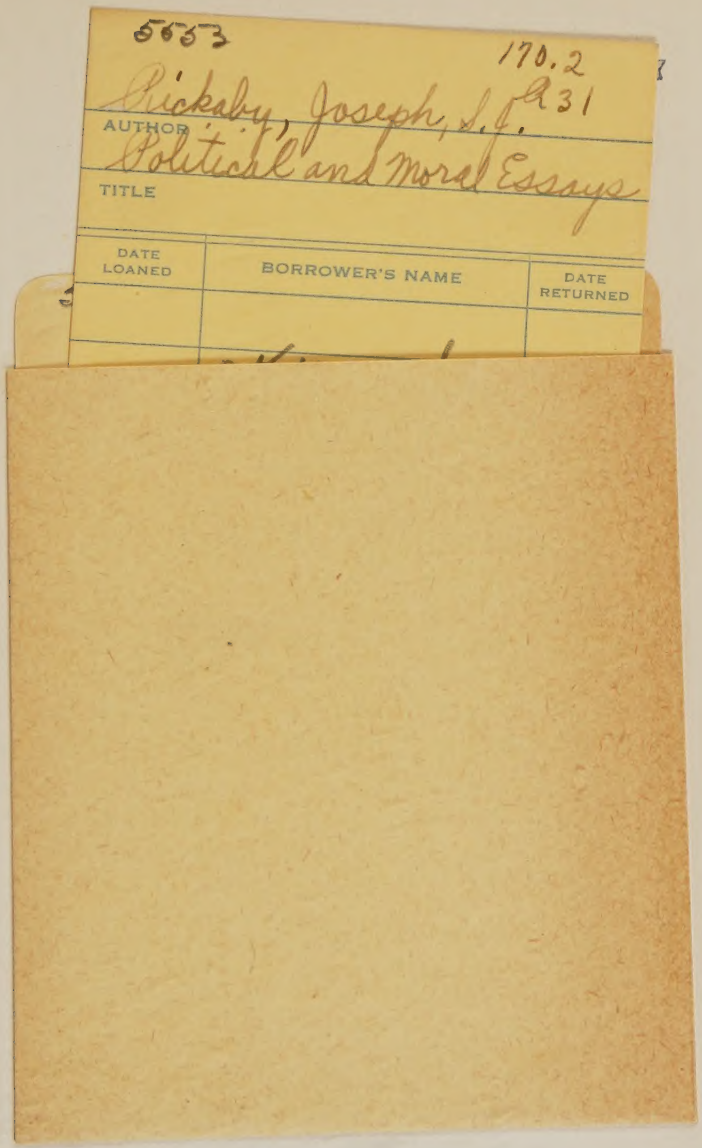

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